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Complaint

(January 11, 1956)

(2)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The B. F. Goodrich Company, and The Texas Company, hereinafter referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act (U. S. C. Title 15, Section 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH ONE: Respondent, The B. F. Goodrich Company, hereinafter sometimes referred to as "Goodrich" is a corporation organized, existing and doing business under the laws of the State of New York, with its principal office and place of business located at 500 Main Street, Akron, Ohio.

Respondent, The Texas Company, sometimes hereinafter referred to as "Texas" is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and place of business located at 135 East 42nd Street, New York 17, New York.

PARAGRAPH TWO: Goodrich, one of the four leading manufacturers of rubber products in the United States, is engaged in the manufacture and sale of a great variety of rubber and associated products, including tires and inner

tubes. It is also engaged in the purchase, resale and distribution of batteries, automotive parts and accessories and other items referred to as Car and Home Merchandise. (3) Goodrich sells its various products directly to the consuming public through more than 500 company owned and operated retail outlets, and to other retailers and wholesalers having places of business located in the various States of the United States. Its total net sales in 1954 were more than one-half billion dollars.

Certain of Goodrich's said products, namely, tires, inner tubes, batteries, automotive parts and accessories, and certain Car and Home Merchandise items, are known in the trade as "TBA" products (an abbreviation for tires, batteries and accessories) and will hereinafter be so referred to in this complaint.

PARAGRAPH THREE: Texas is a large producer and distributor of petroleum products. Directly or through its wholly owned or controlled subsidiaries Texas is engaged in substantially all branches of the petroleum industry. It produces crude oil from its wells, cracks and refines gasoline, and refines and produces lubricants and a wide range of other petroleum products. Sales of said products are made to many types of customers, including petroleum wholesalers (hereinafter referred to as "distributors") and service stations. In 1954 its net sales totaled more than one and one-half billion dollars. Texas also acts as an agent in promoting the sale of the TBA products of certain companies, including those of respondent Goodrich, in the manner hereinafter described.

PARAGRAPH FOUR: In the course and conduct of their said businesses respondents are now and for many years have been engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that they ship

said products, including said TBA products, or cause them to be shipped from the states in which said products are manufactured or warehoused to purchasers thereof located in other States of the United States and the District of Columbia.

PARAGRAPH FIVE: In the course and conduct of their said business of selling, and promoting the sale of, TBA products in commerce, respondents are now and for many years have been engaged in competition with other corporations, partnerships, individuals and firms.

PARAGRAPH SIX: Goodrich sells said TBA products directly and through wholesalers to many classes of customers, including service stations who purchase for resale to consumers for replacement use in their automobiles. Service stations, by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They constitute a large and increasingly important market for TBA products.

(4) Texas sells its petroleum products, directly and through distributors, to more than 42,000 service stations. In addition to petroleum products, a substantial number of these stations sell TBA products.

PARAGRAPH SEVEN: In connection with Goodrich's sale of TBA products in commerce, it has entered into a contract with Texas under which Texas agrees to promote the sale of Goodrich's TBA products to the service stations and distributors selling Texas' petroleum products. Texas has also entered into a substantially similar agreement with the Firestone Tire & Rubber Company (hereinafter referred to as Firestone) as to the stations and distributors selling its petroleum products.

Under said contract Goodrich pays Texas an "override" commission, ranging from 5% to 10% on the net sales of TBA products to service stations and distributors selling Texas' petroleum products in return for the influence and aid given by Texas in promoting said sales. Texas has a large number of service stations and distributors affiliated with it which sell only its petroleum products and, pursuant to its agreements with Goodrich and Firestone, in various ways, urges, recommends and persuades the operators of these outlets to purchase the TBA products of Goodrich or Firestone. Said stations and distributors at no time authorized or requested Texas to find for them, or commit them to, a source of supply for TBA products. Said stations and distributors do not receive any part of the override commission.

Said service stations and distributors are operated ostensibly as independently owned business enterprises. However, their relationship with Texas is such that they are subject to its control. Such control is inherent in the power Texas has by virtue of the various types of contracts of employment, leases, purchase contracts, credit card contracts, franchises and other agreements between it and said service stations and distributors with respect to petroleum products and the occupancy, operation, use and tenure of the stations, other premises, facilities and equipment. Said agreements are for short terms and may be terminated or cancelled by Texas without reason at the end of the term or prior thereto for non-performance of certain provisions. Some of said provisions are so broad and general as to be susceptible of arbitrary interpretation and thus afford a basis for termination of the agreement by Texas.

Thus, the economic welfare of said service stations and distributors is largely dependent upon Texas. If Texas chooses, for whatever reason or no reason, to terminate

said (5) franchise or other agreements the operator of the service station or distributor either loses his business entirely or must change to a different brand of petroleum products or change location or both depending upon the type of lease arrangement involved. Such termination would result in great financial loss and irreparable injury to the operator, such as loss of his business, customer goodwill, sales, profits and cost of relocation.

By virtue of these circumstances, Texas can greatly influence and control the purchasing and marketing activities of said service stations and distributors. Such influence and control has been and is being exercised by Texas over its affiliated service stations and distributors by recommending, urging, persuading and causing them to purchase a substantial quantity of TBA products from Goodrich and Firestone, the sellers designated by it.

PARAGRAPH EIGHT: By virtue of said override commission agreement which Texas has entered into with Goodrich, the latter has sold substantial quantities of TBA products in commerce to said service stations and distributors. Goodrich has been increasingly successful in selling TBA products to said service station and distributor market controlled by Texas. For example, Goodrich made such sales, under said agreement, amounting to $8,868,751 in 1951 and approximately $13,000,000 in 1952 on which it paid Texas commissions of $700,000 and $1,100,000, respectively, for those years.

Also, under the agreement between Texas and Firestone, as described hereinbefore, the latter has sold substantial quantities of TBA products to said service stations and distributors. Firestone made such sales amounting to $26,973,539 in its fiscal year 1952 and $31,248,557 in its fiscal year 1953, on which it paid Texas commissions of $2,286,632 and $2,723,890, respectively, for those years.

PARAGRAPH NINE: In addition, Goodrich has entered into the same or a substantially similar override agreement with five other oil companies. Said oil companies exercise control over the service stations and distributors which purchase their petroleum products in the same manner and for the same reasons as hereinabove alleged as to Texas. By virtue of said agreements, Goodrich has been and is increasingly successful in selling TBA products to the service station and distributor market controlled by oil companies. For example, under such agreements Goodrich's sales increased from $5,500,000 in 1946 to more than $16,500,000 in 1952.

(6) PARAGRAPH TEN: Many competitors of Goodrich and Firestone are unable to sell their TBA products to a substantial number of said distributors and service stations because of said override agreements. Many of these competitors do not pay override commissions to any oil company.

PARAGRAPH ELEVEN: Among the effects of the adoption and use by respondents of said override commission agreements, and each of them, under the circumstances and in the manner hereinabove alleged are that they have:

1. Foreclosed a large and substantial amount of business to manufacturers, distributors, wholesalers and other vendors who compete with Goodrich and Firestone in the sale of TBA products.

2. Injured, lessened, prevented and destroyed competition between Goodrich and Firestone and between each of them and other manufacturers, distributors, wholesalers and other vendors of TBA products in the sale of said products.

3. Increased substantially the amount of TBA products business done by Goodrich and Firestone.

4. Deprived a substantial number of petroleum distributors and service station operators of their right to act as independent businessmen by denying them freedom of choice as to the TBA products which they may purchase and stock for resale.

5. Deprived the consuming public of equal access to the TBA products of competitors of Goodrich and Firestone and other advantages which would result from the natural and unobstructed flow of commerce in said products under conditions of free competition.

PARAGRAPH TWELVE: Said agreements between respondents and said agreements between a respondent and others not parties herein, and the acts and practices of respondents thereunder, as hereinabove alleged, are all to the prejudice of the public, have a dangerous tendency to and have unduly frustrated, hindered, suppressed, lessened, restrained, prevented and eliminated competition in the sale of TBA products in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products; (7) and constitute unfair methods of competition and unfair acts and practices, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission, on this 11th day of January, A. D., 1956, issues its complaint against said respondents.

Complaint

NOTICE

Notice is hereby given you, The B. F. Goodrich Company and The Texas Company, corporations, respondents herein, that the 21st day of March, A. D., 1956, at 10 o'clock is hereby fixed as the time and Federal Trade Commission Office, Washington, D. C., as the place when and where a hearing will be had before a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be enterd requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the thirtieth (30th) day after service of it upon you. Such answer shall contain a concise statement of the facts constituting the ground of defense and a specific admission, denial or explanation of each fact alleged in the complaint, or, if respondents are without knowledge thereof, a statement to that effect.

If respondents elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that respondents admit all material allegations to be true. Such an answer shall constitute a waiver of hearing as to facts so alleged, and an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding shall be issued by the hearing examiner. In such answer, respondents may, however, reserve the right to submit proposed findings and conclusions and the right to appeal under Section 3.22 of the Commission's Rules of Practice for Adjudicative Proceedings.

If any respondent elects to negotiate a consent order, it shall be done in accordance with Section 3.25 of the Commission's Rules of Practice.

Failure to file answer within the time above provided and failure to appear at the time and place fixed for (8) hearing shall be deemed to authorize a hearing examiner without further notice to respondents, to find the facts to be as alleged in the complaint, to conduct a hearing to determine the form of order, and, thereafter, to enter an initial decision containing such findings and order.

In Witness Whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 11th day of January, 1956.

By the Commission.

Robert M. Parrish,
Secretary.

Order Designating Hearing Examiner

(January 11, 1956)

(9)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

Pursuant to authority vested in the Federal Trade Commission and delegated to the Director, Hearing Examiners,

IT IS ORDERED that Earl J. Kolb, a hearing examiner of this Commission, be, and he hereby is, designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law.

EVERETT F. HAYCRAFT,
Director, Hearing Examiners.

• • •

Answer of Respondent The Texas Company

(April 16, 1956)

(19)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

Respondent THE TEXAS COMPANY for its answer to the complaint in the above entitled proceeding states:

I.

The sales commission plan, alleged in the complaint to be an arrangement between respondents, The Texas Company (hereinafter referred to as "Texas") and The B. F. Goodrich Company (hereinafter referred to as "Goodrich"), as carried out by Texas, is an efficient method of stimulating the distribution of TBA products to consumers through many service stations in the United States. Said plan, as so carried out, is a proper competitive method of marketing which benefits suppliers of TBA products, Texas, dealers and distributors of petroleum products, and the consumers. Said sales commission plan, as so carried out, is part of intense and proper competition for the good will and custom of the consumer public.

(20)

II.

1. Answering the allegations of paragraph numbered One of the complaint:

It admits the allegations thereof.

2. Answering the allegations of paragraph numbered Two of the complaint:

It is without knowledge as to the allegations thereof except that it admits that Goodrich is engaged in the manufacture and sale of a number of rubber and associated products including tires and inner tubes and is engaged in the purchase, resale and distribution of batteries, automotive parts and certain accessories and it admits that the term TBA is applied in the trade to products such as tires, inner tubes, batteries and certain other accessories.

3. Answering the allegations of paragraph numbered Three of the complaint:

It admits the allegations of the first sentence thereof. It denies the allegations of the second sentence except that it admits that directly, or through its subsidiaries or affiliated companies, it has engaged in substantially all branches of the petroleum industry. It admits the allegations of the third sentence. It admits the allegations of the fourth sentence except that it is without knowledge as to the allegation that sales are made to many types of customers, the meaning of which phrase is not clear to Texas. It admits the allegations of the fifth sentence. It denies the allegations of the sixth sentence except that it admits that Texas acts as a sales representative in promoting the sale of TBA products of certain companies, and that Goodrich is one of such companies.

4. Answering the allegations of paragraph numbered Four of the complaint:

It admits that it ships some petroleum products from some but not all states in which they are produced or refined or stored to purchasers or (21) dealers located in some other states of the United States and the District of

Columbia. It denies that it ships or causes to be shipped TBA products from the states in which such products are manufactured or warehoused to purchasers thereof located in other states of the United States and the District of Columbia and it is without knowledge as to the allegations of said paragraph in so far as they refer to Goodrich and its method of carrying on its business. Respondent is not required to answer the legal conclusions as to the term "commerce", but it denies that any facts alleged in paragraph numbered Four confer any jurisdiction on the Federal Trade Commission with respect to any conduct by Texas in connection with TBA products.

5. Answering the allegations of paragraph numbered Five of the complaint:

It denies the allegations thereof except that it admits promoting the sale of TBA products which are sold in competition with others. Respondent is not required to answer the legal conclusions in said paragraph numbered Five.

6. Answering the allegations of paragraph numbered Six of the complaint:

It is without knowledge as to the allegations stated in the first sentence thereof except it admits that Goodrich sells TBA products to service stations. It admits the allegations of the second and third sentences thereof except that it is without knowledge as to the allegation that service stations constitute an increasingly important market, the meaning of which phrase is not clear to Texas.

It denies the allegations of the fourth sentence thereof except that it admits that its petroleum products are marketed by approximately 38,000 service station dealers. It admits the allegation of the fifth sentence that in addition to petroleum products a number of service stations sell TBA

products, but it is without knowledge as to the allegation that a substantial (22) number of service stations do so, as the meaning of the phrase "substantial number" is not clear to Texas.

7. Answering the allegations of paragraph numbered Seven of the complaint:

It denies the allegations of the first three sentences thereof (the last of which is in the second subparagraph) except that it admits that it has separate contracts with Goodrich and Firestone whereby each of said companies separately agrees to pay to Texas certain commissions on specified net sales of TBA products of Goodrich and Firestone respectivaly in consideration of the assistance and services to be rendered by the Texas sales organization in connection with promoting the sale respectively of Goodrich and Firestone TBA products. But for the exact terms and conditions of said contracts, Texas seeks leave to refer to the actual written agreements between the parties involved. The allegations of the second and third sentences in so far as they relate to Firestone are irrelevant in this proceeding, to which Firestone is not a party.

It denies the allegations of the fourth sentence thereof except that it admits that there is a large number of service stations and distributors which sell principally its petroleum products, and that it urges and recommends, in proper and lawful ways, the purchase of either or both of Goodrich and Firestone TBA products by service stations and distributors handling Texaco products. The allegations of the fourth sentence in so far as they relate to Firestone are irrelevant in this proceeding, to which Firestone is not a party. It denies the allegations of the fifth sentence thereof and alleges that it never commits stations and distributors to a source of supply for TBA products. It admits the allegations of the sixth sentence thereof.

It denies the allegations of the seventh sentence, except that it admits that the service stations and distributors in question are independently operated business enterprises. It denies the allegations of the eighth, ninth, tenth and eleventh sentences, except that as to the allegation of the tenth sentence, Texas admits that at the end of the term of certain agreements, (23) such agreements terminate and Texas may, prior to the expiration of the term of an agreement, terminate such agreement for certain non-performance by the other party thereto.

It denies the allegations of the twelfth sentence, but states that the economic welfare of service stations and distributors handling Texaco products derives benefit from the high quality and reputation of such products. It alleges that the allegations of sentences thirteen and fourteen are hypothetical, argumentative and improper, and they are denied.

It alleges that the allegations of the fifteenth and sixteenth sentences are based upon the aforesaid hypothetical, argumentative and improper allegations, and they are denied. The allegations of the sixteenth sentence in so far as they relate to Firestone are irrelevant in this proceeding, to which Firestone is not a party.

8. Answering the allegations of paragraph numbered Eight of the complaint:

It denies the allegations of the first sentence thereof except that it admits that Goodrich has sold TBA products to service stations and distributors of Texaco products; it is without knowledge as to the allegation that Goodrich has sold "substantial quantities" of such products, the meaning of which phrase is not clear to Texas. It denies the allegations of the second and third sentences except that it admits that Goodrich has increased its dollar volume of sales

to service stations and distributors of Texas petroleum products and that the sales amounted to approximately the figures stated for 1952 and that the commission paid to Texas under its agreements with Goodrich amounted substantially to the sum alleged in the complaint for that year.

It denies the allegations of the fourth and fifth sentences except that it admits that Firestone has sold quantities of TBA products to service stations and distributors selling Texas petroleum products, and except that it is without knowledge as to the volume of Firestone sales for its fiscal years and the commissions paid to Texas thereon, in view of the fact that the Texas records are kept by calendar years, which do not appear to coincide (24) with the Firestone fiscal years; it is also without knowledge as to the allegations that Firestone sold "substantial quantities" of TBA products, the meaning of which phrase is not clear to Texas. The allegations of the said fourth and fifth sentences are irrelevant in this proceeding, to which Firestone is not a party.

9. Answering the allegations of paragraph numbered Nine of the complaint:

It is without knowledge as to the allegations thereof except that it denies all allegations and inferences that it exercises control over the service stations and distributors which purchase their petroleum products from it.

10. Answering the allegations of paragraph numbered Ten of the complaint:

It denies the allegations of the first sentence thereof. The allegations of the said first sentence in so far as they relate to Firestone are irrelevant in this proceeding, to which Firestone is not a party. It is without knowledge as to the allegations of the second sentence thereof.

11. Answering the allegations of paragraph numbered Eleven of the complaint:

It denies the allegations thereof.

12. Answering the allegations of paragraph numbered Twelve of the complaint:

It denies the allegations thereof.

13. Except as above expressly admitted or qualified, Texas denies each and every allegation of the complaint.

(25)

III

As Additional Defenses:

(A) The bringing and prosecution of the complaint herein is not in the public interest.

(B) The TBA sales commission plan alleged in the complaint, in so far as it relates to the acts and conduct of Texas, is not in violation of Section 5 of the Federal Trade Commission Act. (U. S. C. Title 15, Section 45)

(C) The complaint is insufficient, vague, indefinite and uncertain and does not allege facts sufficient to form a basis for any relief under Section 5 of the Federal Trade Commission Act (U. S. C. Title 15, Section 45) or sufficient to authorize any cease and desist order.

(D) Even if the allegations of the complaint could be established, Section 5 of the Federal Trade Commission Act (U. S. C. Title 15, Section 45) does not prohibit this respondent's acts and practices alleged in the complaint herein and if said Section is construed to prohibit such acts

and practices, it is void and in violation of and contrary to the Fifth and Tenth Amendments of the Constitution of the United States and in violation of and contrary to Articles I, II and III of the Constitution of the United States.

WHEREFORE, respondent THE TEXAS COMPANY prays that an order be entered dismissing the complaint, and for such other relief as may appear to be appropriate.

MARION J. EPLEY, JR.

DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY

By KENNETH C. ROYALL
FREDERICK W. P. LORENZEN
PAUL KERINS
Attorneys for THE TEXAS COMPANY

• • •

Answer of Respondent The B. F. Goodrich Company

(April 16, 1956)

(27)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

Respondent, The B. F. Goodrich Company, for its answer to the complaint herein:

1. Admits each allegation of Paragraph ONE.

2. Admits each allegation of Paragraph Two, except denies that it owns and operates more than 500 retail outlets.

3. Admits that Texas is a large producer and distributor of petroleum products and that Texas renders valuable sales assistance in promoting the sale by Goodrich of certain TBA products, but denies that Texas acts for Goodrich in the manner alleged in the complaint; denies knowledge or information sufficient to form a belief as to each other allegation of Paragraph THREE.

4. Admits each allegation of Paragraph FOUR, except denies knowledge or information sufficient to form a belief as to the allegations concerning Texas.

(28) 5. Denies each allegation of Paragraph FIVE, except admits that at present and for years past, Goodrich, in competition with others, sells and promotes the sale of TBA products in commerce, and that Texas renders valuable sales assistance in promoting the sale by Goodrich of certain TBA products.

6. Admits the first two sentences of Paragraph Six; admits that service stations constitute a large and important market for TBA products and that a number of service stations to whom Texas sells its petroleum products also sell TBA products. Denies knowledge or information sufficient to form a belief as to each other allegation of said paragraph.

7. Denies each allegation of Paragraph Seven, except admits that it sells TBA products in commerce and that it has entered into a contract with Texas under which Texas furnishes valuable sales assistance in promoting the sale by Goodrich of certain TBA products to service stations and distributors selling Texas petroleum products, in return for certain commissions on such sales and refers to said agreement for the terms thereof; admits that there are a large number of service stations and distributors which sell mainly Texas petroleum products, and that Texas urges and recommends, in various proper and legal ways, the purchase and resale of Goodrich TBA products, among other similar products of competitors, by said service stations and distributors; admits that said service stations and (29) distributors do not receive any part of the commission paid by Goodrich to Texas; admits that said service stations and distributors are operated as independently owned business enterprises; and except denies knowledge or information sufficient to form a belief as to agreements between Texas and Firestone.

8. Denies each allegation of Paragraph Eight, except admits that it has received valuable assistance from Texas in promoting the sale by Goodrich of certain TBA products, that the figures for the year 1952 regarding Goodrich sales and commissions thereon paid to Texas are substantially accurate and except denies knowledge or information sufficient to form a belief as to the second sub-paragraph.

Answer of Respondent The B. F. Goodrich Company

9. Denies each allegation of Paragraph Nine, except admits that it has entered into substantially similar sales commission agreements with five other oil companies (two of them since 1952), and that it has received valuable sales assistance from said oil companies in promoting the sale of Goodrich TBA products, and that the figures in the last sentence of said paragraph are substantially accurate with respect to three oil companies in 1946 and four oil companies in 1952.

10. Denies each allegation of Paragraph Ten, except denies knowledge or information sufficient to form a belief as to the last sentence thereof.

(30) 11. Denies each allegation of Paragraph Eleven.

12. Denies each allegation of Paragraph Twelve.

For a Separate Defense

(1) Alleges that the Goodrich TBA program, including the sales commission arrangements with oil companies, in purpose and in practice, is a lawful method of competition which benefits consumers, oil station operators and distributors, and others interested in the manufacture and distribution of TBA products.

(2) Alleges that each and every paragraph of the complaint, either taken singly or with other paragraphs as a whole, fails to state a cause of action under Section 5 of the Federal Trade Commission Act.

(3) Denies that it has violated the provisions of Section 5 of the Federal Trade Commission Act; and alleges that if said statute prohibits the acts and practices referred

to in the complaint it violates Articles I, II and III of, and the Fifth and Tenth Amendments to, the Constitution of the United States, and is therefore void.

(4) Denies that this proceeding is in the public interest.

WHEREFORE, respondent, The B. F. Goodrich Company, prays that the complaint herein be dismissed.

Dated: April 16, 1956

WHITE & CASE

By ORISON S. MARDEN
By EDGAR BARTON
14 Wall Street
New York 5, N. Y.
Attorneys for Respondent,
The B. F. Goodrich Company

• • •

Order Sustaining Interlocutory Appeal

(November 28, 1956)

(85)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

John W. Gwynne, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern
Edward T. Tait

[SAME TITLE]

This matter having been heard on an interlocutory appeal, filed by counsel in support of the complaint, from rulings of the hearing examiner excluding from the record certain evidence relating to the extent and effect of the commission agreement between the respondent, The Texas Company (hereinafter referred to as Texas), and The Firestone Tire and Rubber Company (hereinafter referred to as Firestone), and other evidence relating to the existence, extent and operation of alleged commission agreements between the respondent, The B. F. Goodrich Company (hereinafter referred to as Goodrich), and five oil companies other than Texas; and

It appearing that the basis for the rulings complained of was that evidence of the relationships between Texas and Firestone and between Goodrich and oil companies other than Texas have no bearing on the issues in this proceeding, which proceeding is concerned only with the con-

tractual relationship between Texas and Goodrich, and the acts and practices engaged in pursuant thereto; and

It further appearing, however, that the allegations of the complaint are not limited to the existence of and activities under the commission contract between respondents Texas and Goodrich, but relate also to a general (86) course of competitive action by each of said respondents, under which respondent Texas is charged with having unlawfully entered into and acted under contracts with both Goodrich and Firestone providing for the receipt by it of commissions on the sales of all tires, batteries and accessories sold by Goodrich and Firestone to service stations controlled by Texas, and respondent Goodrich is alleged to have unlawfully entered into and acted under similar contracts with six oil companies, including Texas, providing for the payment by it to said oil companies of commissions on the sales of all tires, batteries and accessories sold by Goodrich to service stations controlled by said oil companies; and

The Commission being of the opinion that the evidence rejected by the hearing examiner apparently was relevant and material to the direct issues thus raised by the complaint and that, if so, it should have been received in support of said issues:

It Is Ordered that the appeal of counsel in support of the complaint be, and it hereby is, sustained.

It Is Further Ordered that the hearing examiner be, and he hereby is, directed to receive into the record such relevant, material and reliable evidence as has been or may be offered concerning the details, operation and competitive effects of the override commission contract between respondent Texas and Firestone and of the alleged similar commission contracts between respondent Goodrich and

each of the five oil companies other than respondent Texas. Such evidence relating to the contract between Texas and Firestone should be admitted as against respondent Texas unconditionally and as against respondent Goodrich subject to a subsequent motion to strike upon a proper showing; and the evidence relating to the alleged contracts between Goodrich and the five oil companies other than Texas should be admitted as against respondent Goodrich unconditionally and as against respondent Texas subject to the same type of motion.

By the Commission.

ROBERT M. PARRISH,
Secretary.

Issued: November 28, 1956

Exception of Respondent The Texas Company

(December 7, 1956)

(87)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

TO THE HONORABLE THE COMMISSIONERS OF
THE FEDERAL TRADE COMMISSION:

The respondent, The Texas Company, by its attorneys, respectfully excepts to the Commission's ORDER SUSTAINING INTERLOCUTORY APPEAL, issued November 28, 1956. Said exception is on the ground that the said order is violative both of the spirit and the letter of the Administrative Procedure Act, that it deprives respondent of due process of law in violation of Amendment V of the Constitution of the United States, and is on the legal and constitutional grounds set forth in respondents's ANSWERING BRIEF IN OPPOSITION TO INTERLOCUTORY APPEAL OF COUNSEL SUPPORTING THE COMPLAINT FROM RULINGS OF HEARING EXAMINER REJECTING CERTAIN EVIDENCE filed with the Commission on November 8, (88) 1956 and on all other legal and constitutional grounds that are applicable.

Respectfully submitted,

MARION J. EPLEY, JR.
DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY

By Kenneth C. Royall
Frederick W. P. Lorenzen
Paul Kerins

This 7th day of December, 1956.

Exception of Respondent The B. F. Goodrich Company (December 12, 1956)

(89)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

TO THE HONORABLE THE COMMISSIONERS OF THE FEDERAL TRADE COMMISSION:

The attorneys for the respondent, The B. F. Goodrich Company, hereby respectfully advise the Federal Trade Commission that said respondent duly takes exception to the Commission's Order Sustaining Interlocutory Appeal, issued November 28, 1956, ordering the hearing examiner to receive certain evidence herein and requests that this exception be made part of the record in this proceeding.

The grounds for this exception are those stated in the answering briefs of said respondent and the other respondent herein, The Texas Company, filed in opposition to the interlocutory appeal from rulings of the hearing examiner excluding said evidence, and the further grounds (90) that said Order denies to said respondent due process of law in violation of the Fifth Amendment to the Constitution of the United States; that said Order is contrary to the intendment and requirements of the Administrative Procedure Act and the statutes establishing and regulating the Commission, as well as the Commission's own rules; and on the grounds of all other applicable legal and constitutional issues raised by said Order.

Respectfully submitted,

WHITE & CASE
Orison S. Marden
Edgar E. Barton
Macdonald Flinn
14 Wall Street
New York 5, New York

Dated: December 12, 1956

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Motion of Respondent The Texas Company

(December 31, 1956)

(92)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

To The Honorable Earl J. Kolb, Hearing Examiner:

COMES Now respondent, The Texas Company, by its attorneys, and shows the following:

1. Counsel, in support of the complaint (hereinafter referred to as "Complainant") pursuant to stipulation, has given to this respondent the names of certain witnesses who are to testify in support of the allegations of the complaint, at hearings to be held in Chicago, Illinois; Omaha, Nebraska; Dallas, Texas; and Atlanta, Georgia, beginning the 14th day of January, 1957.

2. Upon information and belief complainant has communicated with persons, other than those disclosed to the respondent, as possible prospective witnesses in this proceeding, including a large number of dealers, companies and distributors handling the products of The Texas Company.

(93) 3. If, as now appears, complainant is endeavoring to support the allegations of the complaint by introducing evidence purporting to show by sample the consequences arising from the alleged unlawful practices of the respondent, then, in order properly to weigh such "sample", it is necessary to know the total number of persons with whom complainant has communicated prior to picking the sample. It is also necessary to know the basis upon

which the witnesses were selected. The communications with all persons contacted and their replies will throw light upon the method employed to choose the witnesses.

WHEREFORE, respondent prays that the complainant be directed to give respondent, prior to January 14, 1957, separately each of the following: the name, address and employer of each person with whom complainant, or his agents, has communicated as possible prospective witnesses in support of the complaint, together with a statement of the substance of such communications to each person and from each person or a copy of such communications if they were in writing.

Respectfully submitted,

MARION J. EPLEY, JR.
DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY

By Kenneth C. Royall
Frederick W. P. Lorenzen
Paul Kerins

Attorneys for The Texas Company

Dated: December 31, 1956.

• • •

Answer of Counsel Supporting the Complaint in Opposition to the Motion of December 31, 1956, Filed on Behalf of Respondent, The Texas Company

(January 8, 1957)

(170)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

COME Now counsel supporting the complaint in opposition to the motion of respondent, The Texas Company, and state as follows:

1. Respondent seeks confidential information which only the Commission can reveal. (Secs. 1.133 and 1.134, Rules of Practice.)

2. Respondent has failed to show any good or valid reason why the lack of the information it seeks will hamper it in its defense, nor has respondent made any showing as to how such information that is not introduced in the record will in any way prejudice it or deprive it of due process of law.

WHEREFORE, counsel supporting the complaint pray that respondent's motion be denied.

Respectfully submitted,

PETER J. DIAS
Peter J. Dias,

WILLIAM J. BOYD, JR.
William J. Boyd, Jr.,
Counsel Supporting the Complaint.

January 8, 1957.

• • •

Order Denying Motion by Respondent The Texas Company for Disclosure of Names, Addresses and Employers of Parties Interviewed But Not Called as Witnesses

(January 9, 1957)

(173)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

This proceeding is before the hearing examiner upon motion of The Texas Company for an order directing the attorneys in support of the complaint to furnish to the respondent the name, address and employer of each person interviewed during the course of the investigation of this matter, together with communications to and from such persons and copies of such communications if in writing. It appears to the examiner that the attorneys in support of the complaint have, in fact, submitted to the attorney for said respondent the names and addresses of the witnesses who were to be called to testify at the proposed series of hearings to be held at Chicago, Illinois, Omaha, Nebraska, Dallas Texas, and Atlanta, Georgia, and that the present request by said respondent in its motion is without merit.

IT IS THEREFORE ORDERED that respondent's motion for disclosure of names, addresses and employers of parties interviewed but not called as witnesses be, and the same is hereby, denied.

EARL J. KOLB
Earl J. Kolb,
Hearing Examiner.

January 9, 1957.

• • •

Motion to Strike of Respondent The Texas Company

(November 8, 1957)

(260)

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

[SAME TITLE]

TO THE HONORABLE EARL J. KOLB, HEARING EXAMINER:

COMES Now, respondent, The Texas Company, by its attorneys, Marion J. Epley, Jr., and Dwight, Royall, Harris, Koegel & Caskey, and to the end that the record herein, for the purposes of submission and determination, shall not contain evidence which is not material and relevant to the issues or is otherwise inadmissible and evidence which is superfluous and unduly enlarges the record, moves that by appropriate order of the Hearing Examiner, and for the reasons and on the grounds set forth in the Specification attached hereto, the evidence, heretofore received and identified in the Specification attached hereto, be stricken from the record.

Respectfully submitted,

MARION J. EPLEY, JR.
Marion J. Epley

DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY
By Kenneth Royall
Attorneys for The Texas Company

Dated: November 7, 1957.

(261)

SPECIFICATION OF EVIDENCE TO BE STRICKEN

I.

Hearsay Testimony

The testimony cited in this portion of the Specification should be stricken as hearsay.

For purposes of clarity, we shall consider the hearsay testimony in the following categories:

A. Single hearsay.

B. Single hearsay incorporating a conclusion or opinion.

C. Double hearsay.

D. Double hearsay incorporating a conclusion or opinion.

A. *Single Hearsay*

We shall use the symbol "(N)" to indicate hearsay testimony where there has been no identification either of the declarant or of the time or place of the hearsay statement.

In many instances the "single hearsay" statement contains additional evidentiary defects that require it to be stricken, and we shall expressly note such defects as they occur.

(262) An example of the type of "single hearsay" which, we submit, should be stricken, is that of Jennings, Tr. 959, lines 17-19.

Motion to Strike of Respondent The Texas Company

"Yes, I talked to the operators and they told
(N) me that they couldn't buy from me. They said we have to handle Goodrich. You know how it is.'"*

The following evidence should be stricken:

	Witness	*Transcript*	*Line*
1. (N)	Chanenson	Tr. 832*	Lines 16-18.
		Tr. 833*	"No, you can't * * * flipped." line 26 to line 2. "Yes, but * * * do."
(263)			
2. (N)	Olsen	Tr. 868**	Lines 17, 21-22. "Because he said * * * again."
3. (N)	Olsen	Tr. 871*	Lines 11-15. "Frankly, he just * * * sir."

* We do not know for what purpose the evidence is offered or admitted. If it is merely to show what a dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

** We do not know for what purpose the evidence is offered or admitted. If it is merely to show what a dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division C, *infra*.

Motion to Strike of Respondent The Texas Company

		Witness	*Transcript*	*Line*
4.	(N)	Dwyer	Tr. 924**	Lines 12-15. "The dealer told me • • • months."
5.	(N)	Dwyer	Tr. 924**	Line 23 to Tr. 925, line 4. "And Bob told me • • • Company."
6.	(N)	Dwyer	Tr. 925*	Lines 24-26. "Andy's Texaco • • • Tire."
7.	(N)	Shiff	Tr. 931*	Lines 2-4. "Petersen tells me • • • else."

* We do not know for what purpose the evidence is offered or admitted. If it is merely to show what a dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

** We do not know for what purpose the evidence is offered or admitted. If it is merely to show what a dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division C, *infra*.

Motion to Strike of Respondent The Texas Company

(264)

		Witness	*Transcript*	*Line*
8.		Shiff	Tr. 931*	Lines 12-16. "Al Feller buys * * * Prestone."
9.	(N)	Shiff	Tr. 936*	Lines 7-8. "he told me * * * him."
10.	(N)	Jennings	Tr. 953*	Lines 6-7. "he told me * * * done."
11.	(N)	Jennings	Tr. 956*	Lines 17-19, 26 to Tr. 957, line 1. "He told me * * * in."
12.	(N)	Jennings	Tr. 959*	Lines 17-19. "Yes, I talked * * * is."
13.	(N)	Seidenglanz	Tr. 1196*	Lines 15-17. "He told me * * * down."

(265)

14.	(N)	Renken	Tr. 1243*	Lines 17-19.
			Tr. 1244*	"he kept telling me * * * so." Tr. 1244, line 3. "By Firestone", and Line 7. "By * * * representative."

* We do not know for what purpose the evidence is offered or admitted. If it is merely to show what a dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

Motion to Strike of Respondent The Texas Company

	Witness	*Transcript*	*Line*
15. (N)	Renken	Tr. 1244*	Lines 23-26. "He said * * * room."
16. (N)	Olsen	Tr. 1323*	Lines 21-22, 26 to Tr. 1324, line 1. "he explained it * * * company."
17. (N)	Taylor	Tr. 1415	Lines 24-25. "He told me * * * them."
18. (N)	Taylor	Tr. 1416*	Lines 7, 13-14. "That he was * * * Firestone."
19. (N)	Zimmerman	Tr. 1642	Line 4. "He said that * * *"
(266)			
20. (N)	Smith	Tr. 1685*	Lines 20-21. "He told me * * * products."
21. (N)	Smith	Tr. 1692*	Line 26. "That he * * *"
22. (N)	Smith	Tr. 1693*	Line 5. "he said * * *"
23. (N)	Smith	Tr. 1693*	Line 10. "That he had * * *"

* We do not know for what purpose the evidence is offered or admitted. If it is merely to show what a dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

Motion to Strike of Respondent The Texas Company

		Witness	*Transcript*	*Line*
24.		Hulme	Tr. 1928*	Lines 14-16. "he said * * * there."
25.		Hulme	Tr. 1931*	Lines 9-11. "he told me * * * tires."
26.		Hulme	Tr. 1933	Lines 24-25. "he told me * * * me." ***
(267)				
27.		Hulme	Tr. 1936*	Line 22 to Tr. 1937, line 3. "He said * * * you." ***
28.	(N)	Bridges	Tr. 1944*	Lines 7-10. "and he said * * * people."
29.	(N)	Bridges	Tr. 1945*	Lines 12-15. "He said * * *"
30.	(N)	Bridges	Tr. 1946*	Lines 5-6. "and he also said * * * Firestone."

* We do not know for what purpose the evidence is offered or admitted. If it is merely to show what a dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

*** This hearsay was elicited in cross examination directed to the hearsay evidence admitted in the direct over objection. Since it merely particularized matter admitted over objection, it should be stricken along with the original matter.

Motion to Strike of Respondent The Texas Company

		Witness	*Transcript*	*Line*
31.	(N)	Bridges	Tr. 1957*	Lines 15-16. "The substance is * * * Goodrich."***
32.	(N)	Bridges	Tr. 1957*	Lines 22-24. "That he was * * * business."***
(268)				
33.	(N)	Sinclair	Tr. 2036	Lines 11-12. "He told me * * * Goodrich."
34.	(N)	Sinclair	Tr. 2038*	Line 12. "He said that * * *"
35.	(N)	Chambers	Tr. 2049*	Lines 24-25. "He just said * * * to."
36.	(N)	Price	Tr. 2082	Lines 7-17. "they told me * * * tires."
37.	(N)	Price	Tr. 2086*	Line 25 to Tr. 2087, line 1. "That they would * * * handle."

* We do not know for what purpose the evidence is offered or admitted. If it is merely to show what a dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

*** This hearsay was elicited in cross examination directed to the hearsay evidence admitted in the direct over objection. Since it merely particularized matter admitted over objection, it should be stricken along with the original matter.

Motion to Strike of Respondent The Texas Company

	Witness	*Transcript*	*Line*
38.	Scott	Tr. 2108*	Lines 6-7. "That he is * * * Goodrich."
39.	Scott	Tr. 2109*	Line 17. "It wouldn't * * *"
40.	Scott	Tr. 2111*	Lines 9-15. "His words * * * station."
41.	Scott	Tr. 2117*	Lines 19-21. "Oftentimes * * * stock."

* We do not know for what purpose the evidence is offered or admitted. If it is merely to show what a dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

(269)

B. *Single Hearsay Incorporating a Conclusion or Opinion*

In certain instances the testimony of a witness clearly indicates he was stating a conclusion or opinion based upon a hearsay statement made to him by someone not subject to cross-examination, and—in many instances—by someone who was not even identified. With respect to those instances of hearsay statements where either the declarant or the time or place is not identified, we shall note the same by the use of the symbol "(N)".

An example of this type of testimony which should be stricken, is that of Hansen, Tr. 1397, lines 22-24:

> (N) "No specific reason outside of the fact that he felt that he was obligated to buy the bulk of his purchases through Firestone."*

The following evidence should be stricken:

		Witness	*Transcript*	*Line*
1.	(N)	Richmond	Tr. 655*	Lines 20-24. "When you make * * * it."

* We do not know for what purpose the evidence is offered or admitted. If it is merely the conclusion of the witness as to how another person felt, it should be stricken. If it is offered or admitted in an attempt to show—by inference—what the dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the hearsay statement is offered or admitted in an attempt to prove something that the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

Motion to Strike of Respondent The Texas Company

	Witness	*Transcript*	*Line*
2.	Arey	Tr. 688*	Lines 13-19. "He said * * * Goodrich."
3. (N)	Arey	Tr. 690*	Lines 12-13. "The gist of * * * tires."
(270)			
4. (N)	Gehrke	Tr. 706	Line 19. "I would say * * *"
5. (N)	Edelson	Tr. 741*	Line 5. "No, we are * * *"
6. (N)	Edelson	Tr. 741	Lines 11-12, 18. "We are able * * * that."
7. (N)	Chanenson	Tr. 835*	Lines 3-6, 19. "it would tend * * * policy."
8. (N)	Chanenson	Tr. 836*	Line 25 to Tr. 837, line 4. "He told me * * * prospect."
9. (N)	Shiff	Tr. 929*	Lines 15-16. "Because they tell me * * * to."

* We do not know for what purpose the evidence is offered or admitted. If it is merely the conclusion of the witness as to how another person felt, it should be stricken. If it is offered or admitted in an attempt to show—by inference—what the dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the hearsay statement is offered or admitted in an attempt to prove something that the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

Motion to Strike of Respondent The Texas Company

		Witness	*Transcript*	*Line*
10.	(N)	Hansen	Tr. 1397	Lines 22-24. "No specific reason * * * Firestone."
11.	(N)	Taylor	Tr. 1412*	Lines 18-19. "he couldn't * * * TBA."
12.	(N)	Taylor	Tr. 1413	Lines 12-13. "He told me * * * could."
13.	(N)	McCann	Tr. 1584	Lines 21-23. "But the gist * * * batteries."
(271)				
14.	(N)	Zimmerman	Tr. 1642*	Lines 7-10. "I don't know * * * handles."
15.	(N)	Snapka	Tr. 1655*	Line 25 to Tr. 1656, line 1. "if he bought * * * room."
16.		Bridges	Tr. 1945*	Lines 12-15. "He said * * * them."

* We do not know for what purpose the evidence is offered or admitted. If it is merely the conclusion of the witness as to how another person felt, it should be stricken. If it is offered or admitted in an attempt to show—by inference—what the dealer had said, the hearsay statement is entirely unrelated to The Texas Company and is, therefore, immaterial, irrelevant and prejudicial. If the hearsay statement is offered or admitted in an attempt to prove something that the respondent is supposed to have done or said to a dealer, then it constitutes double hearsay and for that additional reason should be stricken. In most instances the double hearsay reference does not identify anyone in The Texas Company to whom the action or statement is attributed; so that there is a double lack of identification. We also consider this testimony in terms of double hearsay under our division D, *infra*.

(272)

C. Double Hearsay

The testimony cited in this division of the Specification should be stricken as "double hearsay"—that is, testimony by a witness of a hearsay statement which in turn contains hearsay. In short, the double hearsay statement was not made to the witness but was reported to the witness by the declarant the witness purports to quote. Thus it is impossible by cross-examination to test the truth of the double hearsay statement. A statement of this type which should be stricken is the following (Dwyer, Tr. 924, lines 11-14):

> "The dealer told me that Mr. Suffert told him he had to handle either Firestone or Goodrich products or he would cancel his lease, and his lease was cancelled for nine months."*

The witness did not identify the declarant or the place of the hearsay statement nor was there an identification of the time or place of the double hearsay reference.

(273)

D. Double Hearsay Incorporating a Conclusion or Opinion

In certain instances there was offered or admitted a double hearsay statement wherein it is apparent the declarant, referred to by the witness, was stating a conclu-

* We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent has done or said to a dealer, then it constitutes double hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company and, therefore, immaterial, irrelevant and prejudicial. We also consider this testimony in terms of "single hearsay" under our division A, *supra*.

sion or opinion based upon what someone else had told him. The person who had told the declarant the matter in question was not, of course, subject to cross-examination, and in many instances was not even identified. In other instances the declarant, who was also not subject to cross-examination, was not even identified. We shall use the symbol "(N)" to indicate those instances where there has been no identification either of the declarant or of the time or place of the hearsay statement, and the symbol "(DN)" to indicate those instances where the person referred to by the declarant—on which the double hearsay statement is based—has not been identified or there has been no identification of the time or place of such double hearsay statement.

An example of this type of "double hearsay" which should be stricken is that of Price, Tr. 2082, line 8-11:

> "* * * They said The Texas Company told
> (N) them they would invest around $30,000 in build-
> (DN) ing them a master station, but they were expected to handle all Texas products plus Firestone. * * *"

The following evidence should be stricken:

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		Witness	*Transcript*	*Line*
1.	(N) (DN)	Richmond	Tr. 654	Lines 22-23. "it was where a customer • • • us."
(274)				
2.	(N) (DN)	Richmond	Tr. 655**	Lines 22-24; Tr. 656, line 6. "and still are told • • • on."
3.	(DN)	Arey	Tr. 688**	Lines 13-15, lines 18-19. "He said they • • • Goodrich."
4.	(N) (DN)	Arey	Tr. 690**	Lines 12-13. "The gist of his conversation • • • tires."
5.	(N) (DN)	Edelson	Tr. 803	Lines 6-11. "When Texaco opens • • • request."
6.	(N) (DN)	Chanenson	Tr. 831	Lines 1-2. "In connection with • • • carry."
7.	(N) (DN)	Chanenson	Tr. 832*	Lines 16-18. "And he said • • • flipped."
8.	(N) (DN)	Chanenson	Tr. 835**	Lines 3-6. "it would tend • • • buying."

* We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company, and is therefore immaterial, irrelevant and prejudicial. We are also considering this testimony in terms of "single hearsay" under our division A, *supra*.

** We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company, and is therefore immaterial, irrelevant and prejudicial. We are also considering this testimony in terms of "single hearsay" under our division B, *supra*.

Motion to Strike of Respondent The Texas Company

		Witness	*Transcript*	*Line*
9.	(N) (DN)	Chanenson	Tr. 835**	Line 19. "Adherence to * * *"
10.	(N) (DN)	Chanenson	Tr. 836**	Lines 25 to Tr. 837, line 4. "He told me * * * prospect."
(275)				
11.	(N) (DN)	Olsen	Tr. 868*	Lines 17, 21-22. "Because he said * * * again."
12.	(N) (DN)	Olsen	Tr. 871*	Lines 11-12. "Frankly, he just * * * Company."
13.	(N) (DN)	Dwyer	Tr. 924*	Line 25-Tr. 925, line 1. "He said * * * tires."
14.	(N) (DN)	Dwyer	Tr. 925*	Lines 24-26. "Andy's Texaco told me * * * Tire."
15.	(N) (DN)	Shiff	Tr. 929**	Lines 15-16. "Because they tell me * * * to."
16.	(N) (DN)	Shiff	Tr. 931*	Lines 2-4. "Peterson tells me * * * else."

* We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company, and is therefore immaterial, irrelevant and prejudicial. We are also considering this testimony in terms of "single hearsay" under our division A, *supra.*

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Motion to Strike of Respondent The Texas Company

		Witness	*Transcript*	*Line*
17.	(DN)	Shiff	Tr. 931*	Lines 15-16. "and said that * * * Prestone."
18.	(N) (DN)	Shiff	Tr. 936*	Lines 7-8. "and he told me * * * him."
19.	(N) (DN)	Jennings	Tr. 953*	Lines 6-7. "and he told me * * * done."
20.	(N) (DN)	Jennings	Tr. 958*	Lines 17-19. "and they told me * * * is."
21.	(N) (DN)	Seidenglanz	Tr. 1196*	Lines 15-17. "He told me * * * down."
(276)				
22.	(N) (DN)	Renken	Tr. 1243*	Lines 17-19. "he kept telling me * * * so."
23.	(N) (DN)	Renken	Tr. 1244*	Lines 23-26. "He said * * * room."
24.	(N) (DN)	Olsen	Tr. 1323*	Lines 21-22; 26 to Tr. 1324, line 1. "he explained * * * company."
25.	(N) (DN)	Hansen	Tr. 1397**	Lines 23-25. "he felt * * * Firestone."

*We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company, and is therefore immaterial, irrelevant and prejudicial. We are also considering this testimony in terms of "single hearsay" under our division A, *supra*.

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		Witness	*Transcript*	*Line*
26.	(N) (DN)	Taylor	Tr. 1412**	Lines 18-19. "he couldn't * * * TBA."
27.	(DN)	Taylor	Tr. 1413**	Lines 12-13, 16-17. "He told me * * * invoice."
28.	(N) (DN)	Taylor	Tr. 1415*	Lines 24-25. "He told me * * * them."
29.	(N) (DN)	Taylor	Tr. 1416*	Lines 7, 12-13. "That he was * * * Firestone."
30.	(N) (DN)	Zimmerman	Tr. 1642**	Lines 7-10. "I don't know * * * handles."
31.	(N) (DN)	Snapka	Tr. 1655**	Line 25 to Tr. 1656, line 1. "said that he * * * room."
(277)				
32.	(N) (DN)	Smith	Tr. 1685*	Lines 20-21. "He told me * * * products."

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		Witness	*Transcript*	*Line*
33.	(N) (DN)	Smith	Tr. 1692*	Line 25. "That he had to * * *"
34.	(N) (DN)	Smith	Tr. 1693*	Line 5. "he said he * * * Goodrich."
35.	(N) (DN)	Smith	Tr. 1693*	Line 10. "That he had to * * *"
36.	(DN)	Hulme	Tr. 1928*	Lines 14-16. "he said that * * * there."
37.	(DN)	Hulme	Tr. 1931*	Lines 9-11. "he told me * * * tires."
38.	(DN)	Hulme	Tr. 1936*	Line 22 to Tr. 1937, line 4. "He said * * * you."***
39.	(N) (DN)	Bridges	Tr. 1944*	Line 6-10. "as I understand * * * people."

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*** The hearsay statement was elicited in cross-examination directed to hearsay evidence admitted over objection and was for the purpose of particularizing such hearsay matter. It should be stricken along with the original hearsay.

		Witness	*Transcript*	*Line*
40.	(N) (DN)	Bridges	Tr. 1945**	Lines 12-15. "He said he * * * them."
41.	(N) (DN)	Bridges	Tr. 1946*	Lines 4-5. "and he also said * * * Firestone."
(278)				
42.	(N) (DN)	Bridges	Tr. 1957*	Lines 15-16. "The substance is * * * Goodrich."***
43.	(N) (DN)	Bridges	Tr. 1957*	Lines 22-24. "That he was * * * business."***
44.	(N) (DN)	Sinclair	Tr. 2036*	Lines 11-12. "he told me * * * Goodrich."
45.	(N) (DN)	Sinclair	Tr. 2038*	Line 12. "He said that * * *"
46.	(N) (DN)	Chambers	Tr. 2049*	Lines 24-25. "He just said * * * to."

* We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company, and is therefore immaterial, irrelevant and prejudicial. We are also considering this testimony in terms of "single hearsay" under our division A, *supra*.

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		Witness	*Transcript*	*Line*
47.	(N) (DN)	Price	Tr. 2082	Lines 8-11. "They said * * * Firestone."
48.	(N) (DN)	Price	Tr. 2086*	Line 25 to Tr. 2087, line 1. "That they would * * * handle."
49.	(N) (DN)	Scott	Tr. 2108*	Lines 6-7. "That he is not * * * Goodrich."
50.	(DN)	Scott	Tr. 2109*	Line 17. "It wouldn't please * * *"
51.	(DN)	Scott	Tr. 2111*	Lines 9-15. "His words * * * station."
52.	(N) (DN)	Scott	Tr. 2117*	Lines 19-21. "Often times * * * stock."

* We do not know for what purpose the evidence is offered or admitted. If the hearsay statement is offered in an attempt to prove something the respondent is supposed to have done or said to a dealer, then it constitutes hearsay and should be stricken. If it is merely to show what a dealer has said, the hearsay statement is entirely unrelated to The Texas Company, and is therefore immaterial, irrelevant and prejudicial. We are also considering this testimony in terms of "single hearsay" under our division A, *supra*.

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II.

Conclusions and Opinions

In many instances the testimony of a witness was no more than a conclusion or opinion and should, therefore, be stricken. An example of this type of testimony is that of Edelson, Tr. 741, line 5:

"No, we are not able to sell tubes only under cover."

The following evidence should be stricken:

	Witness	*Transcript*	*Line*
1.	Richmond	Tr. 653	Lines 8-9. "it was easier • • • time."
2.	Richmond	Tr. 655	Lines 7-11. "In the last • • • nil."
3.	Gehrke	Tr. 706	Lines 19, 26 to Tr. 707, line 2. "I would say • • • you."
4.	Gehrke	Tr. 707	Lines 16-17. "Before my time • • • No."
5.	Gehrke	Tr. 708	Line 9. "I do."
6.	Edelson	Tr. 739	Lines 11-12. "You see • • • station."
7.	Edelson	Tr. 740	Lines 3, 6. "At the present • • • little."
8.	Edelson	Tr. 740	Lines 13, 16, 20-21. "No, • • • lessee."
9.	Edelson	Tr. 740	Line 24. "We are limited • • •"
10.	Edelson	Tr. 741	Line 5. "No, we are not able • • •"

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	Witness	*Transcript*	*Line*
11.	Edelson	Tr. 741	Lines 11-12, 18. "We are able • • • that."
(280)			
12.	Edelson	Tr. 741	Lines 23-24. "We are limited • • • basis."
13.	Edelson	Tr. 746	Lines 10-11. "We are not • • • business."
14.	Edelson	Tr. 747	Line 2. "Very much more • • •"
15.	Edelson	Tr. 756	Line 19. "We could get • • •"
16.	Edelson	Tr. 757	Lines 2-3. "We get • • • Company."
17.	Edelson	Tr. 760	Line 23-24. "but I have not been able • • • there."
18.	Abernethy	Tr. 812	Lines 6, 9. "Well, we were • • • there."
19.	Abernethy	Tr. 813	Lines 3-8. "Well, it has been • • • setups."
20.	Chanenson	Tr. 824	Lines 13-18. "If the policies • • • that."
21.	Chanenson	Tr. 827	Lines 17-20. "and which is • • • prospects."
22.	Chanenson	Tr. 827	Lines 24-25. "Tires and • • • sell."
23.	Chanenson	Tr. 828	Lines 1-5. "in some instances • • • us."
24.	Chanenson	Tr. 828	Lines 7-13. "They might order • • • all."

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	Witness	Transcript	Line
25.	Chanenson	Tr. 830	Lines 1-12. "We have • • • item."
26.	Chanenson	Tr. 831	Lines 1-2. "In connection • • • carry."
27.	O'Keefe	Tr. 895	Line 22. "He owns • • •"
28.	Dwyer	Tr. 906	Lines 19-21. "I found • • • regularly."
(281)			
29.	Dwyer	Tr. 921	Lines 25 to Tr. 922, line 2. "Because he likes • • • judgment."
30.	Dwyer	Tr. 923	Lines 20-24. "and also they • • • go."
31.	Shiff	Tr. 933	Lines 12-16. "No • • • that."
32.	Jennings	Tr. 959	Lines 18, 23. "No, • • • business."
33.	Brusek	Tr. 967	Lines 17-20. "In some instances • • • nature."
34.	Brusek	Tr. 968	Lines 24-26. "because that is • • • repair."
35.	Brusek	Tr. 969	Lines 9-13. "The other • • • stocked."
36.	Brusek	Tr. 970	Lines 7-8. "because in many • • • them."
37.	Backencamp	Tr. 1073	Lines 6-7. "and that is why • • • tires."
38.	Toft	Tr. 1169	Lines 10-12. "I would consider • • • figures."

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	Witness	*Transcript*	*Line*
39.	Toft	Tr. 1179	Lines 25-26. "Yes, we could * * * Conoco."
40.	Nelson	Tr. 1213	Lines 13-15, 23, Tr. 1214, Line 46. "We are not * * * companies."
41.	Nelson	Tr. 1216	Line 5. "Well, we can't * * *"
42.	Renken	Tr. 1237	Lines 13-15. "where there was * * * otherwise."
43.	Kossek	Tr. 1266	Lines 6-7. "in other words * * * basis."
44.	Olsen	Tr. 1321	Line 15. "Because I couldn't * * *"
45.	Zaloudek	Tr. 1472	Line 19. "just to keep * * *"
(282)			
46.	Zaloudek	Tr. 1473	Lines 12-13, 16-20. "I had * * * cooperative."
47.	McCann	Tr. 1522	Lines 23-25. "and he found. * * * it."
48.	McCann	Tr. 1523	Lines 5-6. "We just didn't * * * four."
49.	McCann	Tr. 1525	Lines 12-15. "We tried * * * station."
50.	Sanford	Tr. 1598	Line 18. "I think so."
51.	Sanford	Tr. 1634	Line 18. "I certainly * * *"
52.	Zimmerman	Tr. 1640	Lines 13, 15. "Almost stock * * * Yes."
53.	Melton	Tr. 1860	Lines 16-22. "That would be * * * property."

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	Witness	*Transcript*	*Line*
54.	Melton	Tr. 1861	Lines 14-21. "And, of course, • • • products."
55.	Melton	Tr. 1862	Lines 20-22. "If I might • • • Firestone."
56.	Melton	Tr. 1864	Lines 24 to Tr. 1865, lines 2, 11. "Well, I would • • • batteries."
57.	Melton	Tr. 1883	Lines 12-13. "A good many • • • cancelled."
58.	Riddick	Tr. 1940	Lines 3-5. "But you're larger • • • with."
59.	Koehler	Tr. 2059	Line 16. "I did."
60.	Goldstein	Tr. 2072	Lines 16-20. "It is very • • • controlled."
61.	Goldstein	Tr. 2079	Lines 20-22. "And it has • • • to."
62.	Price	Tr. 2081	Lines 18-19. "They did • • • stationed."

(283)

63.	Price	Tr. 2083	Lines 7-10. "And they couldn't • • • could."
64.	Scott	Tr. 2112	Lines 13-14. "He thought • • • Goodrich."
65.	Scott	Tr. 2114	Line 13. "That is right."
66.	Scott	Tr. 2115	Lines 10-11. "And he • • • line."

(284)

III

Not Responsive and Evasive Answers

In many instances the answer of the witness was not responsive and should, therefore, be stricken. An example of this type of testimony which should be stricken is that of Dwyer, Tr. 926, lines 23-26:

> "Q. What was the name of the dealer you mentioned whose lease was cancelled for nine months?
>
> "A. Mr. Suffert of Texas Company cancelled that lease about two years ago • • •"

In certain instances such testimony is also objectionable in that it contains conclusions or opinions of the witness, and should be stricken from the record for the additional reasons set forth in Section II *supra*. We shall use the symbol "(C)" to indicate instances where the witness has testified as to his conclusions or opinions and "(H)" where the answer involved hearsay:

	Witness	*Transcript*	*Line*
1. (C)	Edelson	Tr. 744	Lines 4-13. "For the simple • • • previously."
2. (C)	Edelson	Tr. 787	Line 1-2. "our business • • • back."
3. (C) (H)	Edelson	Tr. 797	Lines 5-6. "due to the fact • • • gas—"
4. (H)	Dwyer	Tr. 926	Lines 25-26. "Mr. Suffert • • • ago."
5. (C) (H)	Traucht	Tr. 980	Lines 24-25. "To prove something • • • of."

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	Witness	*Transcript*	*Line*
6. (C) (H)	Traucht	Tr. 981	Line 1. "Whether • • • is."
(285)			
7. (C)	McCann	Tr. 1543	Lines 8-9. "I don't know • • • items."
8. (C)	McCann	Tr. 1562	Lines 24-25. "I really don't • • • did."
9.	Sinclair	Tr. 2036	Line 2. "I sold him • • • station."
10. (C) (H)	Avery	Tr. 2091	Lines 4-5. "He does because • • • likes."
11. (C)	Scott	Tr. 2105	Lines 12-13. "I think • • • did."
(286)			

IV

Witness Indicated Lack of Knowledge

In many instances the witness indicated an affirmative lack of knowledge of the subject about which he was testifying, or the testimony of the witness was vague or indefinite. Such testimony should be stricken. An example of this type of testimony which should be stricken is that of Brusek, Tr. 966, Lines 11-12:

> "I would say that. That is strictly a guess on my part. I have nothing to substantiate that."

The following are other instances of such testimony:

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	Witness	*Transcript*	*Line*
1.	Edelson	Tr. 738	Lines 11-13. "I wouldn't be * * * Conoco."
2.	Edelson	Tr. 738	Lines 15-16. "Yes, maybe * * * it."
3.	Edelson	Tr. 762	Lines 9-12. "I think * * * force."
4.	Edelson	Tr. 770	Line 16. "I doubt it."
5.	Edelson	Tr. 770	Lines 18-19. "Positively I don't * * * so."
6.	Jennings	Tr. 950	Line 21. "I could only guess * * *"
7.	Jennings	Tr. 950	Line 23. "Several hundred."
8.	Brusek	Tr. 966	Lines 5-6. "But as a guess * * * volume."
9.	Brusek	Tr. 966	Lines 11-12. "I would say * * * that."
10.	Seidenglanz	Tr. 1208	Lines 9-10. "I believe * * * is Firestone."
(287)			
11.	Renken	Tr. 1245	Lines 18-19. "I don't know * * * anything."
12.	Renken	Tr. 1247	Lines 9-10. "I don't recall * * * so."
13.	Renken	Tr. 1253	Lines 19-20. "It would be a good guess * * * yes."
14.	Olsen	Tr. 1327	Line 7. "I am not sure * * *"
15.	Olsen	Tr. 1327	Lines 17-18. "I don't know * * * sure."

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	Witness	*Transcript*	*Line*
16.	Hansen	Tr. 1398	Line 19. "I believe he • • • station."
17.	Hoffman	Tr. 1513	Lines 6-7. "I wouldn't know • • • leased."
18.	Hoffman	Tr. 1513	Lines 15-16. "I imagine so • • • into."
19.	Hoffman	Tr. 1515	Line 7. "I believe • • • lessee."
20.	Boyd	Tr. 1924	Lines 3-5. "I am sure • • • do."
21.	Hulme	Tr. 1929	Lines 13-14. "I think it is • • • impression."
22.	Hulme	Tr. 1929	Lines 22-24. "I am under the impression • • • property."
23.	Hulme	Tr. 1932	Lines 3-4. "I presume • • • believe."
24.	Bridges	Tr. 1943	Lines 10-11. "I don't know • • • back."
25.	Scott	Tr. 1997	Lines 8-10. "I imagine • • • think."
26.	Chambers	Tr. 2042	Lines 17-18. "No, it would be rough • • • percent."
(288)			
27.	Chambers	Tr. 2043	Line 7. "It was • • • think."
28.	Goldstein	Tr. 2073	Lines 4-10. "I couldn't answer • • • selling."
29.	Avery	Tr. 2089	Line 25. "Must be • • • thousand."
30.	Avery	Tr. 2090	Line 2. "I imagine • • • hundred."

(289)

V.

Events Prior to 1952

In several instances the testimony of a witness related to events occurring prior to 1952 and should, therefore, be stricken. An example of this type of testimony which should be stricken is that of McCann, Tr. 1524, lines 22-23:

> "That started to dry up in the late 1930's. By 1949 it was greatly reduced."

Other instances of testimony involving pre-1952 matter are:

	Witness	*Transcript*	*Line*
1.	Nelson	Tr. 1216	Line 25. "In 1949, $889.67."
2.	Nelson	Tr. 1217	Lines 4-7. "13th and Deer Park • • • $555.60."
3.	Nelson	Tr. 1217	Lines 13-14. "45th and Lake • • • year."
4.	Zaloudek	Tr. 1453 through Tr. 1465	Line 1 through line 18.
5.	McCann	Tr. 1526	Lines 6-7. "I would say • • • them."
6.	McCann	Tr. 1526	Lines 20-22. "Most of the ones • • • them."
7.	McCann	Tr. 1527	Lines 9, 11-12. "I didn't • • • hundred."
8.	McCann	Tr. 1528A	Lines 13-14. "I would say • • • year."

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	Witness	*Transcript*	*Line*
9.	Talley	Tr. 1886 Tr. 1889	Line 22, through Line 19.
10.	Sinclair	2032	Lines 17-18. "I think the . . . deal."
11.	Sinclair	2032	Line 24. "Yes, sir."

(290)

VI.

Testimony re Conoco

In many instances a witness testified about the relationship between The B. F. Goodrich Company and the Continental Oil Company (Conoco). Testimony as to the relationship between Goodrich and Conoco is entirely irrelevant to the issues in this proceeding and should be stricken from the record.

The record reference to the testimony relating to such relationship is as follows:

	Witness	*Transcript*	*Line*
1.	Carlsen	Tr. 615	Line 13.
2.	Carlsen	Tr. 616	Line 13-25.
3.	Carlsen	Tr. 625	Line 8-22.
4.	Reichert	Tr. 636	Line 26.
5.	Reichert	Tr. 637	Line 1 through 12.
6.	Reichert	Tr. 638	Lines 23-26.
7.	Reichert	Tr. 639	Lines 1-26.
8.	Reichert	Tr. 640	Line 1-16.
9.	Richmond	Tr. 645	Line 12.

Motion to Strike of Respondent The Texas Company

	Witness	*Transcript*	*Line*
10.	Richmond	Tr. 645*	Line 23 through
		Tr. 647	Line 25.
11.	Richmond	Tr. 657	Line 15.
12.	Gehrke	Tr. 707	Lines 23-26.
(291)			
13.	Gehrke	Tr. 708	Lines 2-3.
14.	Edelson	Tr. 748	Line 4, through
		Tr. 749	Line 22.
15.	Edelson	Tr. 800	Line 16, through
		Tr. 801	Line 2.
16.	Edelson	Tr. 802	Lines 10-25.
17.	Abernathy	Tr. 809	Lines 17-23.
18.	Chanenson	Tr. 826	Lines 7-8.
19.	Chanenson	Tr. 829	Lines 9-14, 22.
20.	Chanenson	Tr. 837	Lines 9, through
		Tr. 839	Line 3.
21.	Chanenson	Tr. 843	Lines 1-23.
22.	Chanenson	Tr. 856	Lines 2-16.
23.	O'Keefe	Tr. 897	Line 16, through
		Tr. 898	Line 11.
24.	Dwyer	Tr. 911	Line 15.
25.	Trauscht	Tr. 986	Line 3, through
		Tr. 987	Line 7.

* This testimony relates to a summary allegedly by the Goodyear Tire and Rubber Co. setting forth the amount of business the witness did with that Company in the years 1953, 1954 and 1955.

Motion to Strike of Respondent The Texas Company

	Witness	*Transcript*	*Line*
26.	Cramer	Tr. 1048	Line 10.
27.	Cramer	Tr. 1049 Tr. 1050	Line 16, through Line 10.
28.	Cramer	Tr. 1052	Lines 8-16.
29.	Cramer	Tr. 1053 Tr. 1054	Line 18, through Line 4.
30.	Backencamp	Tr. 1065 Tr. 1066	Line 15, through Line 20.
31.	Backencamp	Tr. 1067 Tr. 1068	Line 21, through Line 5.
32.	Backencamp	Tr. 1068 Tr. 1071	Line 19, through Line 14.
(292)			
33.	Backencamp	Tr. 1072	Lines 19-24.
34.	Backencamp	Tr. 1088 Tr. 1089	Lines 17, through Line 20.
35.	O'Mara	Tr. 1096	Line 1-6.
36.	O'Mara	Tr. 1100 Tr. 1101	Line 8, through Line 14.
37.	O'Mara	Tr. 1110 Tr. 1111	Line 6, through Line 3,
38.	O'Mara	Tr. 1116	Lines 1-5.
39.	O'Mara	Tr. 1123	Lines 1-9.
40.	McDaniel	Tr. 1148 Tr. 1162	Line 14, through Line 10.
41.	Toft	Tr. 1171 Tr. 1179	Line 11, through Line 26.

Motion to Strike of Respondent The Texas Company

	Witness	*Transcript*	*Line*
42.	Seidenglanz	Tr. 1191	Line 26.
43.	Seidenglanz	Tr. 1197 Tr. 1198	Line 20, through Line 21.
44.	Seidenglanz	Tr. 1199 Tr. 1201	Line 7, through Line 4.
45.	Seidenglanz	Tr. 1205 Tr. 1207	Line 17, through Line 10.
46.	Renken	Tr. 1236	Lines 14-15.
47.	Kossek	Tr. 1258 Tr. 1259	Lines 26, through Line 9.
48.	Kossek	Tr. 1262 Tr. 1264	Line 11, through Line 24.
49.	Kossek	Tr. 1266 Tr. 1268	Line 13, through Line 13.
50.	Cornell	Tr. 1275 Tr. 1319	Line 20, through Line 24.
51.	Olsen	Tr. 1327 Tr. 1337	Line 19, through Line 8.
(293)			
52.	Olsen	Tr. 1348 Tr. 1349	Line 20, through Line 7.
53.	Olsen	Tr. 1354 Tr. 1355	Line 20, through Line 6.
54.	Scoville	Tr. 1361 Tr. 1367	Line 14, through Line 26.
55.	Kanago	Tr. 1382	Line 23.
56.	Kanago	Tr. 1383	Line 13-15.

Motion to Strike of Respondent The Texas Company

	Witness	*Transcript*	*Line*
57.	Kanago	Tr. 1384	Line 26.
58.	Hansen	Tr. 1403**	Line 4, through
		Tr. 1405	Line 6.
59.	Hansen	Tr. 1405**	Line 23, through
		Tr. 1406	Line 2.
60.	Taylor	Tr. 1416**	Line 23, through
		Tr. 1421	Line 22.
61.	Taylor	Tr. 1448	Line 25, through
		Tr. 1451	Line 14.
62.	Hoffman	Tr. 1511	Lines 1-6.
63.	Hoffman	Tr. 1514	Lines 9-20.
64.	McCann	Tr. 1563	Lines 19, through
		Tr. 1564	Line 2.
65.	Akin	Tr. 1668	Lines 15-19.
66.	Akin	Tr. 1668	Line 26, through
		Tr. 1669	Line 11.
67.	Smith	Tr. 1690	Line 26, through
		Tr. 1691	Line 7.
68.	Smith	Tr. 1692	Line 3-19.
69.	Hussong	Tr. 1711	Line 8-13.
70.	Barton	Tr. 1730	Line 10, through
		Tr. 1732	Line 17.

** The testimony related to relations between Conoco and Firestone, neither of which is a respondent in this proceeding.

Motion to Strike of Respondent The Texas Company

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VI

Exhibits That Should be Stricken

A number of Exhibits relating to oil companies that were not respondents in this proceeding were admitted over objection. The Hearing Examiner stated (Tr. 636) that the proper time for a motion to strike by respondents would be at the end of the case. The following Exhibits, including Exhibits which are immaterial to this proceeding, should be stricken.

	Exhibit No.	*Admission into evidence (transcript)*
1	CX7	17
2	CX104*	348
3	CX105*	350
4	CX106*	350A
5	CX107*	351
6	CX108*	352
7	CX109*	352
8	CX110*	353
9	CX150A, B**	1278
10	CX151A, B**	1278
11	CX152**	1278
12	CX153A, B**	1300

* Relates to matter prior to 1952
** Relates to Conoco

• • •

Supplement to Motion to Strike of The Texas Company

(November 19, 1957)

(317)

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

[SAME TITLE]

TO THE HONORABLE EARL J. KOLB, HEARING EXAMINER:

Respondent, The Texas Company, by its attorneys filed with the Secretary of the Commission, on November 8, 1957, a "MOTION TO STRIKE". Examination of the record of the hearings held on November 6th, 7th and 8th, 1957, discloses that certain additional exhibits and testimony should be stricken.

WHEREFORE, Respondent hereby supplements its "MOTION" in the following respects:

(318)

1. Section VI of the Specification annexed to the Motion is supplemented by adding thereto the following:

> The following exhibits relate to oil companies that are not respondents in this proceeding and which have no relation to The Texas Company. No employee or officer of The Texas Company has had anything to do with these exhibits and, on almost all of them, the name The Texas Company does not even appear.
>
> The exhibits have no probative value. Their admission, and the basing of any adjudication thereon, would violate the Rules of the Commission as to probative evidence and the Administrative Procedure Act

and would deprive The Texas Company of due process of law (Tr. 2228-29).

All of the exhibits listed below were admitted subject to the foregoing objection. In addition, many were admitted subject to a specific hearsay objection or a specific objection that the documents were *res inter alios acta*—the so-called intra-company objection. This Motion to Strike is based upon all objections made. We have indicated those (319) exhibits to which there is the additional hearsay objection by the use of the symbol "(H)" and those documents to which there is the additional intra-company objection "(I)".

The following exhibits should, therefore, be stricken:

	Exhibit No.	*Admission to Evidence (Transcript)*
13. (H)	CX215(i)	2230
14. (H)	CX216(i)	2232
15. (H)	CX216(i)	2233
16. (H)	CX218(i)	2234
17. (H)	CX219(i)	2235
18. (H)	CX220 A-C(i)	2235
19. (H)	CX221(i)	2236
20. (H)	CX222(i)	2237
21. (H)	CX223(i)	2238
22.	CX224(i)	2239
23. (H)	CX226(i)	2240
24. (H)	CX227 A, B(i)	2241

(i)—Relates to Conoco.

Supplement to Motion to Strike of The Texas Company

	Exhibit No.	*Admission to Evidence (Transcript)*
25.	CX229(i)	2242
26. (I)	CX230 A-D(i)	2243
(320)		
27. (I)	CX231 A–F(i)	2245
28. (I)	CX232 A, B(i)	2245
29. (I)	CX233 A–D(i)	2246
30. (I)	CX234 A–L(i)	2248
31. (H) (I)	CX235 A–F(i)	2250
32. (H) (I)	CX237(i)	2260
33. (H) (I)	CX238 A, B(i)	2260
34. (H) (I)	CX239 A–D(i)	2260
35. (H) (I)	CX240 A–F(i)	2260
36. (H) (I)	CX242 A, B(i)	2263
37. (H) (I)	CX243(i)	2263
38. (H) (I)	CX244(i)	2263
39. (H) (I)	CX245(i)	2263
40. (H) (I)	CX246(i)	2263
41. (H) (I)	CX247(i)	2263
42. (H) (I)	CX248(i)	2263
43. (H) (I)	CX249(i)	2263
44. (H) (I)	CX250(i)	2263
45. (H) (I)	CX251(i)	2263

(i)—Relates to Conoco.

Supplement to Motion to Strike of The Texas Company

(321)

	Exhibit No.	*Admission to Evidence (Transcript)*
46. (H) (I)	CX252 A, B(i)	2263
47. (H) (I)	CX253(i)	2263
48. (H) (I)	CX254(i)	2263
49. (H) (I)	CX255(i)	2263
50. (H) (I)	CX256 A, B(i)	2263
51. (H) (I)	CX257(i)	2263
52. (H) (I)	CX258(i)	2263
53. (H) (I)	CX259(i)	2263
54. (H) (I)	CX260(i)	2263
55. (H) (I)	CX261(i)	2263
56. (H) (I)	CX262(i)	2263
57. (H) (I)	CX263 A–Z(22)(i)	2264
58.	CX264(i)	2265
59.	CX266 A–C(i)	2266
60.	CX267 A–C(i)	2267
61. (I)	CX71(ii)	2268
62. (I)	CX72(ii)	2269
63.	CX73(iii)	2269

(322)

63.	CX73(iii)	2269

(i)—Relates to Conoco.

(ii)—Relates to Jenney Manufacturing Company.

(iii)—Relates to Shell American Petroleum Company.

Supplement to Motion to Strike of The Texas Company

	Exhibit No.	*Admission to Evidence (Transcript)*
64. (I)	CX74(iii)	2270
65.	CX77 A, B(i)	2271
66.	CX78 A, B(i)	2271
67.	CX79 A–D(i)	2272
67. (I)	CX80(i)	2272
68. (H) (I)(iv)	CX81 A–E(i)	2274
69.	CX82 A, B(v)	2274
70. (H) (I)	CX83 A, B(v)	2275
71. (H) (I)	CX84 A, B(v)	2275
72. (I)	CX85 A–E(v)	2276
73. (H)	CX87(v)	2278
74.	CX88(vi)	2279
75.	CX89 A–C(vi)	2280
76.	CX91 A–C(vii)	2281
77.	CX92(viii)	2281
78.	CX93 A–C(vii)	2283

(i)—Relates to Conoco.

(iii)—Relates to Shell American Petroleum Company.

(iv)—Immaterial since it refers to consumption purchases which are not in issue in this proceeding.

(v)—Relates to The Ohio Oil Company.

(vi)—Relates to Emblem Oil Company.

(vii)—Relates to oil companies other than respondent.

(viii)—Relates to other oil companies and to events prior to 1952.

Supplement to Motion to Strike of The Texas Company

(323)

	Exhibit No.	*Admission to Evidence (Transcript)*
79.	CX132(vii)	2284
80.	CX134 A–F(vii)	2284
81.	CX136(vii)	2285
82.	CX75(iii)	2317

2. The Specification attached to the Motion is further supplemented by adding thereto the following section:

VII

Testimony Re Other Oil Companies

The witness Hoban testified, in part, about the relationship between The B. F. Goodrich Company and other oil companies that are not respondents in this proceeding. Testimony as to the relationship between Goodrich and such other companies is entirely irrelevant to the issues in this proceeding, is in no way competent against The Texas Company, and should be stricken from the record as against it.

(iii)—Relates to Shell American Petroleum Company.

(vii)—Relates to oil companies other than respondent.

Supplement to Motion to Strike of The Texas Company

(324)

The testimony sought to be stricken is as follows:

	Transcript	*Line*
1.	Tr. 2287	Lines 11-15
2.	Tr. 2288 Tr. 2291	Line 6 through Line 4
3.	Tr. 2294	Line 16 through Line 20
4.	Tr. 2298 Tr. 2300	Line 2 through Line 20
5.	Tr. 2301 Tr. 2302	Line 14 through Line 8

Respectfully submitted,

MARION J. EPLEY, JR.
DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY

By Frederick W. P. Lorenzen
Attorneys for The Texas Company

Dated: November 18, 1957.

• • •

Motion to Strike of Respondent The B. F. Goodrich Company

(December 23, 1957)

(367)

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

[SAME TITLE]

TO THE HONORABLE EARL J. KOLB, HEARING EXAMINER:

COMES NOW, respondent, The B. F. Goodrich Company, by its attorneys, White & Case, and to the end that the record herein, for the purposes of submission and determination, shall not contain evidence which is not material and relevant to the issues or is otherwise inadmissible and evidence which is superfluous and unduly enlarges the record, moves that by appropriate order of the Hearing Examiner, and for the reasons and on the grounds set forth in the Specification attached hereto, the evidence, heretofore received and identified in the Specification (368) attached hereto, be stricken from the record.

Respectfully submitted,

WHITE & CASE

By Edgar Barton
Attorneys for The B. F. Goodrich Company

Dated: December 19, 1957

Motion to Strike of Respondent The B. F. Goodrich Co.

(369)

SPECIFICATION OF EVIDENCE TO BE STRICKEN

I.

Hearsay Testimony

The testimony set forth below should be stricken as hearsay.

While the rules of evidence in a proceeding before a quasi-judicial administrative body can be more elastic by reason of the professional abilities of those concerned, it is submitted that the specified testimony below transgresses the bounds of such elasticity. It presents a peculiar admixture of single hearsay and compound hearsay with declarants often unidentified, time not established, and place unknown. There are many instances of subjective interpretations of conversations after the lapse of impressively long periods of time, and most—if not all—of those testifying were basically prejudiced by a fundamental economic interest in the proceedings. The inability to cross-examine the declarants in all fairness dictates the deletion from the record of this testimony, which at best lies on the outer periphery of credibility.

An example of flagrant abuse of the evidentiary elasticity of an administrative tribunal is the testimony of Richmond (Tr. 655, lines 20-24):

(370)

> "When you make a hundred calls and they show no signs of business, and then maybe continue to make calls another hundred and still are told from time to time that they can't buy your tires, that they have to buy Goodrich, I think it is time to give up on it."

Motion to Strike of Respondent The B. F. Goodrich Co.

The following evidence should be stricken:

	Witness	*Transcript*	*Line*
1.	Richmond	Tr. 654	Lines 22-23. "it was where • • • us."
2.	Richmond	Tr. 655	Lines 20-6. "When you make • • • on."
3.	Arey	Tr. 688	Lines 13-19. "He said • • • Goodrich."
4.	Arey	Tr. 690	Lines 12-13. "The gist of • • • tires."
5.	Chanenson	Tr. 832	Lines 16-18. "No, you can't • • • flipped."
6.	Chanenson	Tr. 832	Lines 25-1. "Yes, but • • • do."
7.	Chanenson	Tr. 836	Lines 25-4. "He told me • • • prospect."
8.	Olsen	Tr. 868	Lines 17, 21-22. "Because he said • • • again."
9.	Olsen	Tr. 871	Lines 11-15. "Frankly, he just • • • sir."
10.	Dwyer	Tr. 924	Lines 12-15. "The dealer • • • months."
11.	Dwyer	Tr. 924	Lines 23-4. "And Bob told • • • Company."
(371)			
12.	Dwyer	Tr. 925	Lines 24-26. "Andy's Texaco • • • Tire."
13.	Shiff	Tr. 929	Lines 15-16. "Because they tell me • • • to."

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
14.	Shiff	Tr. 931	Lines 2-4. "Peterson tells me • • • else."
15.	Shiff	Tr. 931	Lines 12-16. "Al Feller • • • Prestone."
16.	Shiff	Tr. 936	Lines 7-8. "he told me • • • him."
17.	Jennings	Tr. 953	Lines 6-7. "he told me • • • done."
18.	Jennings	Tr. 956	Lines 17-19, 26-1. "He told me • • • in."
19.	Jennings	Tr. 958	Lines 17-19. "and they told me • • • is."
20.	Seidenglanz	Tr. 1196	Lines 15-17. "He told me • • • down."
21.	Renken	Tr. 1243	Lines 17-19. "he kept telling • • • so."
22.	Renken	Tr. 1244	Line 3. "By Firestone." Line 7. "By • • • representative."
23.	Renken	Tr. 1244	Lines 23-26. "He said • • • room."
24.	Olsen	Tr. 1323	Lines 21-22; 26-1. "he explained it • • • company."
25.	Hansen	Tr. 1397	Lines 22-24. "No specific reason • • • Firestone."
(372)			
26.	Taylor	Tr. 1413	Lines 12-13; 16-17. "He told me • • • invoice."

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
27.	Taylor	Tr. 1415	Lines 24-25. "He told me • • • them."
28.	Taylor	Tr. 1416	Lines 7; 13-14. "That he was • • • Firestone."
29.	McCann	Tr. 1584	Lines 21-23. "But the gist • • • batteries."
30.	Zimmerman	Tr. 1642	Line 4. "He said that • • •"
31.	Zimmerman	Tr. 1642	Lines 7-10. "I don't know • • • handles."
32.	Snapka	Tr. 1655	Lines 25-1. "said that he • • • room."
33.	Smith	Tr. 1685	Lines 20-21. "He told me • • • products."
34.	Smith	Tr. 1692	Line 25. "That he had to • • •"
35.	Smith	Tr. 1693	Line 5. "he said he • • • Goodrich."
36.	Smith	Tr. 1693	Line 10. "That he had to • • •"
37.	Hulme	Tr. 1928	Lines 14-16. "he said that • • • there."
38.	Hulme	Tr. 1931	Lines 9-11. "he told me • • • tires."
(373)			
39.	Hulme	Tr. 1933	Lines 24-25. "he told me • • • me."
40.	Hulme	Tr. 1936	Lines 22-4. "He said • • • you."
41.	Bridges	Tr. 1944	Lines 6-10. "as I understand • • • people."

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
42.	Bridges	Tr. 1945	Lines 12-15. "He said • • • them."
43.	Bridges	Tr. 1946	Lines 5-6. "and he also said • • • Firestone."
44.	Bridges	Tr. 1957	Lines 15-16. "The substance is • • • Goodrich."
45.	Bridges	Tr. 1957	Lines 22-24. "That he was • • • business."
46.	Sinclair	Tr. 2036	Lines 11-12. "He told me • • • Goodrich."
47.	Sinclair	Tr. 2038	Line 12. "He said that • • •"
48.	Chambers	Tr. 2049	Lines 24-25. "He just said • • • to."
49.	Price	Tr. 2082	Lines 6-12. "they told me • • • it."
50.	Price	Tr. 2086	Lines 25-1. "That they would • • • handle."
51.	Scott	Tr. 2108	Lines 6-7. "That he is not • • • Goodrich."
(374)			
52.	Scott	Tr. 2109	Line 17. "It wouldn't please • • •"
53.	Scott	Tr. 2111	Lines 9-15. "His words • • • station."
54.	Scott	Tr. 2117	Lines 19-21. "Often times • • • stock."

Motion to Strike of Respondent The B. F. Goodrich Co.

II.

Conclusions and Opinions

There are many instances in the record of testimony that reflected a conclusion or opinion of the witness; such testimony has no probative value and should be deleted from the record. For example, Chanenson testified (Tr. 831, lines 1-2):

> "In connection with batteries, certain specific brands are the only kind that most Texaco stations can carry."

The following evidence should be stricken:

	Witness	*Transcript*	*Line*
1.	Richmond	Tr. 653	Lines 8-9. "it was easier • • • time."
2.	Richmond	Tr. 655	Lines 7-11. "In the last • • • nil."
3.	Richmond	Tr. 655	Lines 20-24. "When you make • • • it."
4.	Gehrke	Tr. 706	Lines 19, 26 to Tr. 707 line 2. "I would say • • • you."
(375)			
5.	Gehrke	Tr. 707	Lines 16-17. "Before my time • • • No."
6.	Gehrke	Tr. 708	Line 9. "I do."
7.	Edelson	Tr. 739	Lines 11-12. "You see • • • station."
8.	Edelson	Tr. 740	Lines 3, 6. "At the present • • • little."

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
9.	Edelson	Tr. 740	Lines 13, 16, 20-21. "No, • • • please."
10.	Edelson	Tr. 740	Line 24. "We are limited • • •"
11.	Edelson	Tr. 741	Line 5. "No, we are not able • • •"
12.	Edelson	Tr. 741	Lines 11-12, 18. "We are able • • • that."
13.	Edelson	Tr. 741	Lines 23-24. "We are limited • • • basis."
14.	Edelson	Tr. 746	Lines 10-11. "We are not • • • business."
15.	Edelson	Tr. 747	Line 2. "Very much more • • •"
16.	Edelson	Tr. 756	Line 19. "We could get • • •"
17.	Edelson	Tr. 757	Lines 2-3. "We get • • • Company."
18.	Edelson	Tr. 760	Lines 23-24. "but I have not been able • • • there."
(376)			
19.	Edelson	Tr. 803	Lines 6-11. "When Texaco • • • request."
20.	Abernethy	Tr. 812	Lines 6, 9. "Well, we were • • • there."
21.	Abernethy	Tr. 813	Lines 3-8. "Well, it has been • • • setups."
22.	Chanenson	Tr. 827	Lines 17-20. "and which is • • • prospects."
23.	Chanenson	Tr. 827	Lines 24-25. "Tires and • • • sell."

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
24.	Chanenson	Tr. 828	Lines 1-5. "in some instances • • • us."
25.	Chanenson	Tr. 828	Lines 7-13. "They might order • • • all."
26.	Chanenson	Tr. 830	Lines 1-12. "We have • • • item."
27.	Chanenson	Tr. 831	Lines 20-21. "What • • • cases."
28.	Chanenson	Tr. 835	Lines 2-6. And • • • buying."
29.	O'Keefe	Tr. 895	Line 22. "He owns • • •"
30.	Dwyer	Tr. 906	Lines 19-21. "I found • • • regularly."
31.	Dwyer	Tr. 921	Lines 25 to Tr. 922, line 2. "Because he likes • • • judgment."
(377)			
32.	Dwyer	Tr. 923	Lines 20-24. "and also they • • • go."
33.	Shiff	Tr. 929	Lines 15-16. "Because they tell me • • • to."
34.	Shiff	Tr. 933	Lines 12-16. "No • • • that."
35.	Jennings	Tr. 959	Lines 18, 23. "No • • • business."
36.	Brusek	Tr. 967	Lines 17-20. "In some instances • • • nature."
37.	Brusek	Tr. 968	Lines 24-26. "because that is • • • repair."
38.	Brusek	Tr. 969	Lines 9-13. "The other • • • stocked."

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
39.	Brusek	Tr. 970	Lines 7-8. "because in many • • • them."
40.	Trauscht	Tr. 980	Lines 24-1. "that I know • • • is."
41.	Backencamp	Tr. 1073	Lines 3-7. "Because most • • • tires."
42.	Toft	Tr. 1169	Lines 10-12. "I would consider • • • figures."
43.	Toft	Tr. 1179	Lines 25-26. "Yes, we could • • • Conoco."
44.	Nelson	Tr. 1213	Lines 13-15, 23, Tr. 1214, Line 6. "We are not • • • companies."
(378)			
45.	Nelson	Tr. 1216	Line 5. "Well, we can't • • •"
46.	Renken	Tr. 1237	Lines 13-15. "where there was • • • otherwise."
47.	Kossek	Tr. 1266	Lines 6-7. "in other words • • • basis."
48.	Olsen	Tr. 1321	Line 15. "Because I couldn't • • •"
49.	Taylor	Tr. 1412	Lines 18-19. "But he couldn't • • • TBA."
50.	Zaloudek	Tr. 1473	Lines 12-13, 16-20. "I had • • • cooperative."
51.	McCann	Tr. 1522	Lines 23-25. "and he found • • • it."
52.	McCann	Tr. 1523	Lines 5-6. "We just didn't • • • four."

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
53.	McCann	Tr. 1525	Lines 12-15. "We tried • • • station."
54.	McCann	Tr. 1526	Lines 20-22. "Most of • • • them."
55.	Sanford	Tr. 1598	Line 18. "I think so."
56.	Sanford	Tr. 1634	Line 18. "I certainly • • •"
57.	Melton	Tr. 1860	Lines 16-22. "That would be • • • property."
58.	Melton	Tr. 1861	Lines 14-21. "And of course, • • • products."
(379)			
59.	Melton	Tr. 1862	Lines 20-22. "If I might • • • Firestone."
60.	Melton	Tr. 1864	Lines 24 to Tr. 1865 Lines 2, 11. "Well, I would • • • batteries."
61.	Melton	Tr. 1883	Lines 12-13. "A good many • • • cancelled."
62.	Riddick	Tr. 1940	Lines 3-5. "But you're larger • • • with."
63.	Goldstein	Tr. 2072	Lines 15-19. "It is very • • • controlled."
64.	Goldstein	Tr. 2079	Lines 20-22. "And it has • • • to."
65.	Price	Tr. 2081	Lines 18-19. "They did • • • stationed."
66.	Price	Tr. 2083	Lines 7-10. "and they couldn't • • • could."

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
67.	Scott	Tr. 2112	Lines 13-14. "He thought • • • Goodrich."
68.	Scott	Tr. 2115	Lines 10-11. "And he • • • line."
69.	Scott	Tr. 2117	Lines 19-21. "Often times • • • stock."

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III.

Not Responsive and Evasive Answers

In many instances the answer of the witness was not responsive and should, therefore, be stricken. An example of this type of testimony which would be stricken is that of Dwyer, Tr. 926, lines 23-26:

> "Q. What was the name of the dealer you mentioned whose lease was cancelled for nine months?
> "A. Mr. Suffert of Texas Company cancelled that lease about two years ago • • •"

In certain instances such testimony is also objectionable in that it contains conclusions or opinions of the witness, and should be stricken from the record for the additional reasons set forth in Section II *supra*.

The following testimony should be stricken:

	Witness	*Transcript*	*Line*
1.	Edelson	Tr. 744	Lines 4-13. "For the simple • • • previously."
2.	Edelson	Tr. 787	Lines 1-2. "our business • • • back."
3.	Edelson	Tr. 797	Lines 5-6. "due to the fact • • • gas—"

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	Witness	*Transcript*	*Line*
4.	Dwyer	Tr. 926	Lines 25-26. "Mr. Suffert • • • ago."
5.	Traucht	Tr. 980	Lines 24-1. "To prove something • • • is."
(381)			
6.	McCann	Tr. 1543	Lines 8-9. "I don't know • • • items."
7.	McCann	Tr. 1562	Lines 24-25. "I really don't • • • did."
8.	Sinclair	Tr. 2036	Line 2. "I sold him • • • station."
9.	Avery	Tr. 2091	Lines 4-5. "He does because • • • likes."
10.	Scott	Tr. 2105	Lines 12-13. "I think • • • did."

IV.

Witness Indicated Lack of Knowledge

In many instances the witness indicated an affirmative lack of knowledge of the subject about which he was testifying, or the testimony of the witness was vague or indefinite. Such testimony should be stricken. An example of this type of testimony which should be stricken is that of Brusek, Tr. 966, Lines 11-12:

> "I would say that. That is strictly a guess on my part. I have nothing to substantiate that."

The following are other instances of such testimony:

Motion to Strike of Respondent The B. F. Goodrich Co.

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	Witness	*Transcript*	*Line*
1.	Edelson	Tr. 738	Lines 11-13. "I wouldn't be • • • Conoco."
2.	Edelson	Tr. 738	Lines 15-16. "Yes, maybe • • • it."
3.	Edelson	Tr. 762	Lines 9-12. "I think • • • force."
4.	Edelson	Tr. 770	Line 16. "I doubt it."
5.	Edelson	Tr. 770	Lines 18-19. "Positively I don't • • • so."
6.	Jennings	Tr. 950	Line 21. "I could only guess • • •"
7.	Jennings	Tr. 950	Line 23. "Several hundred."
8.	Brusek	Tr. 966	Lines 5-6. "But as a guess • • • volume."
9.	Brusek	Tr. 966	Lines 11-12. "I would say • • • that."
10.	Seidenglanz	Tr. 1208	Lines 9-10. "I believe • • • is Firestone."
11.	Renken	Tr. 1245	Lines 18-19. "I don't know • • • anything."
12.	Renken	Tr. 1247	Lines 9-10. "But the rest • • • so."
13.	Renken	Tr. 1253	Lines 19-20. "It would be a good guess • • • yes."

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14.	Olsen	Tr. 1327	Line 6. "I am not sure • • •"
15.	Olsen	Tr. 1327	Lines 17-18. "I don't know • • • sure."

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	Witness	*Transcript*	*Line*
16.	Hansen	Tr. 1398	Line 19. "I believe he • • • station."
17.	Hoffman	Tr. 1513	Lines 6-7. "I wouldn't know • • • leased."
18.	Hoffman	Tr. 1513	Lines 15-16. "I imagine so • • • into."
19.	Hoffman	Tr. 1515	Line 6. "I believe • • • lessee."
20.	Boyd	Tr. 1924	Lines 3-5. "I am sure • • • do."
21.	Hulme	Tr. 1929	Lines 13-14. "I think it is • • • impression."
22.	Hulme	Tr. 1929	Lines 22-24. "I am under the impression • • • property."
23.	Hulme	Tr. 1932	Lines 3-4. "I presume • • • believe."
24.	Bridges	Tr. 1943	Lines 10-11. "I don't know • • • back."
25.	Scott	Tr. 1997	Lines 8-10. "I imagine • • • think."
(384)			
26.	Chambers	Tr. 2042	Lines 17-18. "No, it would be rough • • • percent."
27.	Chambers	Tr. 2043	Line 7. "It was • • • think."
28.	Goldstein	Tr. 2073	Lines 4-10. "I couldn't answer • • • selling."
29.	Avery	Tr. 2089	Line 25. "Must be • • • thousand."
30.	Avery	Tr. 2090	Line 2. "I imagine • • • hundred."

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V.

Events Prior to 1952

In several instances the testimony of a witness related to events occurring prior to 1952 and should, therefore, be stricken. An example of this type of testimony which should be stricken is that of McCann, Tr. 1524, lines 22-23:

> "That started to dry up in the late 1930's. By 1949 it was greatly reduced."

Other instances of testimony involving pre-1952 matter are:

	Witness	*Transcript*	*Line*
1.	Nelson	Tr. 1216	Line 25. "In 1949, $889.67."
2.	Nelson	Tr. 1217	Lines 4-7. "13th and Deer Park • • • $555.60."
(385)			
3.	Nelson	Tr. 1217	Lines 13-14. "45th and Lake • • • year."
4.	Zaloudek	Tr. 1453 through Tr. 1465	Line 1 through Line 18.
5.	McCann	Tr. 1526	Lines 6-7. "I would say • • • them."
6.	McCann	Tr. 1526	Lines 20-22. "Most of the ones • • • them."
7.	McCann	Tr. 1527	Lines 9, 11-12. "I didn't • • • hundred.
8.	McCann	Tr. 1528-A	Lines 13-14. "I would say • • • year."

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	Witness	*Transcript*	*Line*
9.	Talley	Tr. 1886 Tr. 1912	Line 22, through Line 7.
10.	Sinclair	Tr. 2032	Lines 17-18. "I think the * * * deal."

VI.

Testimony re Firestone

In many instances a witness testified about the relationship between The Texas Company and The Firestone Tire and Rubber Company. Testimony as to the relationship between Texaco and Firestone is entirely irrelevant to the issues in this proceeding, and admission thereof would represent a deprivation to a respondent of due process of law. The following references should be stricken from the record:

(386)

	Witness	*Transcript*	*Line*
1.	Wolfe	Tr. 81	21-23
2.	Wolfe	Tr. 83	11-22
3.	Wolfe	Tr. 89	1-20
4.	Wolfe	Tr. 90	4-21
5.	Wolfe	Tr. 92	1-51
6.	Wolfe	Tr. 93	1-8
7.	Wolfe	Tr. 94-95	25-17
8.	Doss	Tr. 559	9-10
9.	Doss	Tr. 560	6-10
10.	Doss	Tr. 563-564	23-1

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
11.	Doss	Tr. 565	17-24
12.	Doss	Tr. 566-567	24-1
13.	Doss	Tr. 570-571	4-14
14.	Doss	Tr. 572-573	24-23
15.	Doss	Tr. 574	4-7
16.	Doss	Tr. 578	23-25
17.	Doss	Tr. 579-580	11-8
18.	Doss	Tr. 581	8-26
19.	Doss	Tr. 583	5-15
20.	Doss	Tr. 587-588	18-8
21.	Doss	Tr. 588	12-16
22.	Doss	Tr. 589	7-12
(387)			
23.	Chanenson	Tr. 831	21-23
24.	Doss	Tr. 941	20-22
25.	Doss	Tr. 943	1-7; 12-17; 22-23; 25-26
26.	Doss	Tr. 944	1-2
27.	Burgess	Tr. 1004	4-25
28.	Backencamp	Tr. 1060	23-24
29.	Backencamp	Tr. 1062	5-7; 10-22
30.	Backencamp	Tr. 1063	4-7
31.	Backencamp	Tr. 1064	4-5; 11-12; 21-22
32.	Cramer	Tr. 1088	11-15
33.	V. L. O'Mara	Tr. 1099	20-24
34.	V. L. O'Mara	Tr. 1100	4-5

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	Witness	*Transcript*	*Line*
35.	K. L. O'Mara	Tr. 1116	16-17
36.	Seidenglanz	Tr. 1195	10-24
37.	Seidenglanz	Tr. 1200	17-18
38.	Seidenglanz	Tr. 1204	17-24
39.	Seidenglanz	Tr. 1206	9-13
40.	Seidenglanz	Tr. 1207	17-20
41.	Seidenglanz	Tr. 1208	6-9
42.	Renken	Tr. 1241	1-17
43.	Renken	Tr. 1243-1244	8-26
44.	Renken	Tr. 1246-1247	21-3
45.	Renken	Tr. 1247	11-19
(388)			
46.	Olson	Tr. 1325	1-4; 22-23
47.	Olson	Tr. 1326	12-13
48.	Olson	Tr. 1327	5-6
49.	Olson	Tr. 1329	16-18
50.	Scoville	Tr. 1358	3-4; 13-14; 22-23
51.	Hansen	Tr. 1392	5-8; 18-21
52.	Hansen	Tr. 1393-1394	18-4
53.	Hansen	Tr. 1395	7-9
54.	Hansen	Tr. 1396-1397	25-1; 17-24
55.	Hansen	Tr. 1401	6-11
56.	Hansen	Tr. 1405	10-13
57.	Taylor	Tr. 1409-1410	23-5; 15-18
58.	Taylor	Tr. 1411	7-10

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	Witness	*Transcript*	*Line*
59.	Taylor	Tr. 1413	3-4
60.	Taylor	Tr. 1415	21-25
61.	Taylor	Tr. 1416	4-21
62.	Taylor	Tr. 1420-1421	22-12
63.	Zaloudek	Tr. 1457	20-25
64.	Zaloudek	Tr. 1458-1459	19-24
65.	Zaloudek	Tr. 1462	17-20
66.	Zaloudek	Tr. 1463-1464	20-13
67.	Zaloudek	Tr. 1464-1465	23-7
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68.	Zaloudek	Tr. 1471	20-24
69.	Zaloudek	Tr. 1472	10-17
70.	Zaloudek	Tr. 1472-1473	25-5
71.	Zaloudek	Tr. 1478-1479	9-12
72.	Hoffman	Tr. 1514	13-15
73.	Hoffman	Tr. 1515	3-4
74.	Sanford	Tr. 1592-1594	4-19
75.	Sanford	Tr. 1596	4-15
76.	Sanford	Tr. 1597-1601	16-4
77.	Sanford	Tr. 1602-1603	9-13
78.	Sanford	Tr. 1606	21-25
79.	Sanford	Tr. 1607	11-12
80.	Sanford	Tr. 1610	4-25
81.	Sanford	Tr. 1624-1625	7-4
82.	Sanford	Tr. 1626-1627	19-9
83.	Sanford	Tr. 1630-1631	21-23

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	Witness	*Transcript*	*Line*
84.	W. E. Smith	Tr. 1685	5-8
85.	W. E. Smith	Tr. 1687	6-10
86.	W. E. Smith	Tr. 1692	23-25
87.	W. E. Smith	Tr. 1693	9-10
88.	Barton	Tr. 1725	19-25
89.	Barton	Tr. 1727	8-15
90.	Barton	Tr. 1729	5-11; 17-20
91.	Roberts	Tr. 1759	5-7
(390)			
92.	Roberts	Tr. 1760	25
93.	Roberts	Tr. 1762	13-15; 18-22
94.	Roberts	Tr. 1763	21-22
95.	Roberts	Tr. 1765	3-4
96.	Roberts	Tr. 1766	17-20
97.	Roberts	Tr. 1767-1770	6-10
98.	Talley	Tr. 1888	16-17
99.	Talley	Tr. 1889	12-24
100.	Talley	Tr. 1890	13-22
101.	Talley	Tr. 1892	4-9; 21-25
102.	Talley	Tr. 1894-1895	14-7
103.	Boyd	Tr. 1923-1924	23-4
104.	Hulme	Tr. 1928	20-21
105.	Hulme	Tr. 1929	8-10
106.	Hulme	Tr. 1931	8-11
107.	Hulme	Tr. 1933	20-25
108.	Hulme	Tr. 1934	15-18

Motion to Strike of Respondent The B. F. Goodrich Co.

	Witness	*Transcript*	*Line*
109.	Hulme	Tr. 1936-1937	16-6
110.	Hulme	Tr. 1937	15-21
111.	Bridges	Tr. 1945	7-15
112.	Bridges	Tr. 1946	3-5
113.	Bridges	Tr. 1947	18-24
114.	Bridges	Tr. 1957	18-24
115.	Bridges	Tr. 1958	5-7
(391)			
116.	Gause	Tr. 1962-1965	17-14
117.	Tidwell	Tr. 1972-1973	19-21
118.	Tidwell	Tr. 1975	14-26
119.	Tidwell	Tr. 1981	13-14
120.	Tidwell	Tr. 1982-1983	18-17
121.	Gilbert	Tr. 2023	2-19
122.	Gilbert	Tr. 2029	3-5
123.	Sinclair	Tr. 2034	11-15
124.	Price	Tr. 2082	8-12
125.	Price	Tr. 2083	21-23
126.	Price	Tr. 2086	7-9; 18-19
127.	Avery	Tr. 2090	22-23
128.	Avery	Tr. 2092	23-24
129.	Avery	Tr. 2094	10-15
130.	Avery	Tr. 2095	5-8
131.	Scott	Tr. 2106	18-22
132.	Glenn	Tr. 2137-2138	22-5
133.	Bartlett	Tr. 2182-2187	15-22

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	Witness	*Transcript*	*Line*
134.	Bartlett	Tr. 2187-2188	10-15
135.	Halsell	Tr. 2195-2196	8-9
136.	Halsell	Tr. 2196-2204	21-4
137.	Wolfe	Tr. 2207-2210	19-9
138.	Wolfe	Tr. 2210-2211	18-23
139.	Wolfe	Tr. 2213	4-19
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140.	Wolfe	Tr. 2214-2215	18-25

VII.

Exhibits re Firestone

The following exhibits relate to The Firestone Tire and Rubber Company, which is not a respondent in this proceeding and which has no relation to The B. F. Goodrich Company. No employee or officer of The B. F. Goodrich Company has had anything to do with these exhibits and, on almost all of them, the name The B. F. Goodrich Company does not even appear.

The exhibits have no probative value; their admission, and the basing of any decision thereon, would violate the Rules of the Commission as to probative evidence and the Administrative Procedure Act and would deprive The B. F. Goodrich Company of due process of law (Tr. 2228-29).

All of the exhibits listed below were admitted subject to the foregoing objection. In addition, many were admitted subject to a specific hearsay objection or a specific objection that the documents were *res inter alias acta*—the so-called intra-company objection. This Motion to Strike is based upon all objections made.

The following exhibits should be stricken:

Motion to Strike of Respondent The B. F. Goodrich Co.

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	Exhibit Number	*Admission to Evidence (Transcript)*
1.	CX 113 A-Z-52	2141
2.	CX 115 A-D	2143
3.	CX 117	2144
4.	CX 119	2147
5.	CX 121	2149
6.	CX 123	2150
7.	CX 202	2157
8.	CX 203	2157
9.	CX 204 A-F	2160
10.	CX 205 A-F	2160
11.	CX 206 A-F	2160
12.	CX 207 A-F	2160
13.	CX 208 A-F	2160
14.	CX 213-B	2180
15.	CX 46 E-J	2195
16.	CX 51	2196
17.	CX 43	2210
18.	CX 41	2216
19.	CX 234 K-L	2248

• • •

Order Disposing of Motions to Strike Certain Testimony and Exhibits Filed by the Respondents

(January 2, 1958)

(413)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

DOCKET NO. 6485

[SAME TITLE]

This proceeding is before the hearing examiner on Motion to Strike, Supplement to Motion to Strike, and Memorandum in Support of Motion to Strike, filed by the respondent The Texas Company; answer thereto, filed by counsel supporting the complaint; and Reply Memorandum in Support of Motion to Strike filed by The Texas Company; and also upon Motion to Strike and Memorandum in Support of Motion to Strike filed by the respondent The B. F. Goodrich Company.

The specifications contained in the motions to strike may be divided into the following categories:

1. Hearsay testimony.
2. Testimony purporting to give conclusions and opinions.
3. Non-responsive and evasive answers.
4. Testimony where a witness indicated limited knowledge.
5. Testimony relative to events prior to 1952.

Order Disposing of Motions to Strike Certain Testimony and Exhibits Filed by the Respondents

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6. Testimony relating to other oil companies which had been received subject to motion to strike by The Texas Company.

7. Testimony relating to The Goodyear Tire & Rubber Company and The Firestone Tire & Rubber Company which has been received subject to motion to strike by The B. F. Goodrich Company.

1. *Hearsay testimony*: The hearsay testimony contained in the specifications in the motions to strike involve testimony by competitor suppliers, who testified as to the reasons given by station operators for not purchasing such suppliers' merchandise. At the time this testimony was offered, the hearing examiner overruled the objections based upon hearsay on the basis that such testimony came within the exceptions to the hearsay rule, and that such testimony could properly be received not as proof of the matters contained in said reasons, but only to show the state of mind or motives of the gas station operators.

The record shows that the respondent The B. F. Goodrich Company entered into agreements with the respondent The Texas Company and other oil companies by the terms of which contracts The B. F. Goodrich Company agreed to pay The Texas Company and other oil companies an override commission on all merchandise sold to stations under contract with The Texas Company and other oil companies on consideration that said oil companies promote the sale of Goodrich TBA products to said stations. This evidence, coupled with further evidence as to the control which The Texas Company and other oil companies maintained over their stations by reason of their contracts with such stations, made material to the issues in this proceed-

ing the attitude or state of mind of the station operators with reference to purchasing TBA products competitive to those sold by respondent The B. F. Goodrich Company. In view of this, the hearing examiner received this testimony solely as proof of the attitude or the state of mind of the station operators, and repeatedly stated on the record that the evidence was not received as proof of the statements testified to.

As a legal basis for these rulings upon evidence, reference is made to the case of *Lawler* v. *Loewe,* 235 U. S. 522, 536. In this case, salesmen testified as to the reasons given them by dealers for not purchasing Loewe hats. Justice Holmes in writing the decision stated:

> (415) "The reason given by customers for ceasing to deal with sellers of the Loewe Hats, including letters from dealers to Loewe & Co., were admissible."

Justice Holmes further clarified this holding of the Court in his opinion in *Buckeye Powder Company* vs. *E. I. DuPont de Nemours Powder Company, et al.* 248 U. S. 55, 65, December 9, 1918, in which he stated:

> "Several exceptions were taken to the exclusion of statements by third persons of their reasons for refusing or ceasing to do business with the plaintiff. We should be slow to overthrow a judgment on the ground of either the exclusion or admission of such statements except in a very strong case. But the exclusion in this instance was proper. The statement was wanted not as evidence of the motives of the speakers but as evidence of the facts recited as furnishing the motives. *Lawler* vs. *Loewe,* 235 U. S. 522, 536; *Elmer* vs. *Fessenden,* 151 Massachusetts, 359, 362."

Order Disposing of Motions to Strike Certain Testimony and Exhibits Filed by the Respondents

Subsequent thereto the Circuit Court of Appeals in the Second Circuit in the matter of *Greater New York Live Poultry Chamber of Commerce* vs. *United States*, 47 F. (2d) 156, C. C. A. 2, January 12, 1931, in referring to a similar situation stated as follows:

> "A number of the assignments of error relate to the admission over objection of the testimony of witnesses for the prosecution as to reasons given by receivers for their refusal to sell to recalcitrant marketmen. Such statements of reasons, though hearsay, are admissible to prove the state of mind of the declarant if that be in issue. * * * They are not admissible, however, to prove the truth of the facts recited as explanation of the state of mind of the declarant. * * * In the case at bar the reasons for the refusals to sell were a material issue, since the government sought to show them related to the conspiracy and the defendants claimed that the true reasons were entirely different. The appellants would have been entitled to an instruction limiting the probative force of the evidence to that issue—more specifically, warning the jury not to consider these statements as evidence of the truth of the matters asserted therein. But, since the appellants did not ask for such an (416) instruction, but attempted rather to exclude the evidence entirely, they cannot now claim error in its admission."

In view of the above, the hearing examiner is of the opinion that there is a legally sound basis for his rulings upon the so-called hearsay testimony, and that no basis has been presented in said motions for disturbing or reversing such rulings.

Order Disposing of Motions to Strike Certain Testimony and Exhibits Filed by the Respondents

2. *Conclusions and Opinions*: The specifications under this section of the motions refer to witnesses who were testifying concerning difficulties encountered in selling various gasoline stations. The objections to the answers as being conclusions were considered by the hearing examiner at the time such testimony was given, and where such answers were considered to be factual statements, these objections were overruled. The examiner has reviewed the testimony specified in the motions to strike and sees no reason for disturbing his rulings on evidence heretofore made during the course of the trial and while the witness was on the stand.

3. *Non-Responsive and Evasive Answers*: The hearing examiner has reviewed the special instances cited in the motions to strike under this heading and sees no reason for disturbing the rulings made by him at the time the objections were made and while the witness was testifying.

4. *Witness Indicated Limited Knowledge*: The specifications listed under this section of the motions to strike go to the weight of the testimony and not to its admissibility. In many instances no objection was made at the time the witness testified, and in other instances objections were made on other grounds. The record is clear that the witnesses, when testifying, stated the limitations on their knowledge and this will be considered in the weight to be given. There is no occasion to disturb the rulings made at the time of trial.

5. *Objections as to Events Prior to 1952*: These objections were taken up and thoroughly argued during the course of the hearings, and there is nothing in the present

motions which requires any change in the rulings of the hearing examiner.

6. *Testimony and Exhibits with Reference to Oil Companies other than Texas*: The testimony and exhibits (417) relating to oil companies other than Texas were received in evidence subject to a motion to strike by respondent The Texas Company in compliance with a previous order of the Commission relative to such evidence. After reviewing the record, the hearing examiner is of the opinion that no connection has been established between The Texas Company and The B. F. Goodrich Company contracts with other oil companies and the testimony and exhibits introduced with reference to the other oil companies, should be stricken as to The Texas Company.

7. *Testimony and Exhibits Pertaining to The Goodyear Tire & Rubber Company and The Firestone Tire & Rubber Company*: The testimony and exhibits relative to TBA transactions between The Texas Company and The Goodyear Tire & Rubber Company and The Firestone Tire & Rubber Company were received in evidence, subject to motion to strike by respondent The B. F. Goodrich Company in compliance with a previous order of the Commission relative to such evidence. After reviewing the record, the hearing examiner is of the opinion that no connection has been established between The B. F. Goodrich Company, and The Texas Company contracts with The Firestone Tire & Rubber Company and The Goodyear Tire & Rubber Company, and the testimony and exhibits introduced with reference to the relationship between The Texas Company and The Goodyear Tire & Rubber Company and The Firestone Tire & Rubber Company should be stricken as to respondent The B. F. Goodrich Company. The motion

of The Texas Company incorporates eight exhibits which do not apply to other oil companies, but refer to periods of time prior to 1952. For the reasons heretofore stated, these exhibits should remain in the record.

It Is Therefore Ordered that the motions of respondents The B. F. Goodrich Company and The Texas Company to strike certain testimony as being hearsay, conclusions and opinions, not responsive and evasive, based upon limited knowledge, and as to events prior to 1952 be, and the same are hereby, denied.

It Is Further Ordered that the motion of The Texas Company to strike testimony pertaining to oil companies other than Texas be sustained as to The Texas Company, and said testimony is hereby stricken as to The Texas Company, but remain in the record as to respondent The B. F. Goodrich Company.

(418) It Is Further Ordered that motion of the respondent The Texas Company to strike certain exhibits pertaining to oil companies other than The Texas Company be sustained, and that said exhibits insofar as they pertain to oil companies other than The Texas Company be stricken as to The Texas Company, but remain in the record as to respondent The B. F. Goodrich Company.

It Is Further Ordered that motion of The B. F. Goodrich Company to strike certain testimony pertaining to transactions between The Texas Company and The Goodyear Tire & Rubber Company and The Firestone Tire & Rubber Company be sustained, and said testimony be stricken as to The B. F. Goodrich Company, but remain in the record as to respondent The Texas Company.

Order Disposing of Motions to Strike Certain Testimony and Exhibits Filed by the Respondents

It Is Further Ordered that motion of the respondent The B. F. Goodrich Company to strike certain exhibits pertaining to transactions between The Texas Company and The Goodyear Tire & Rubber Company and The Firestone Tire & Rubber Company be sustained as to respondent The B. F. Goodrich Company, and that said exhibits, insofar as they pertain to The Goodyear Tire & Rubber Company and The Firestone Tire & Rubber Company be stricken as to The B. F. Goodrich Company, but remain in the record as to respondent The Texas Company.

Earl J. Kolb,
Hearing Examiner.

January 2, 1958.

Motion of the Texas Company to Withdraw Issues and to Strike Evidence

(February 7, 1958)

(419)

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

[SAME TITLE]

TO THE HONORABLE EARL J. KOLB, HEARING EXAMINER:

The Texas Company, by its attorneys, moves, pursuant to Rule 3.8 of the Commission Rules of Practice and Procedure, for an order granting the following relief:

A. Withdrawing from this proceeding all issues, legal or factual, involving or relating to dealings, practices, contracts, agreements or arrangements between The Texas Company and The Firestone Tire & Rubber Company and the operations of the parties to such agreements thereunder.

B. Striking from the record in this proceeding all evidence heretofore received in this case with respect to any of the issues or matters set out in sub-division A hereof.

(420)

The reasons for the Motion are as follows:

1. There is also pending before the same Hearing Examiner who is hearing the instant proceeding, another proceeding entitled *In the Matter of The Firestone Tire & Rubber Company and Shell Oil Company,* Docket No. 6487, in which there are now involved, *inter alia,* the identical issues and matters stated in sub-division A of this Motion.

2. In the instant proceeding, when evidence as to the issues and matters stated in sub-division A of this Motion was first tendered by counsel supporting the complaint,

detailed objection to all of such evidence was made (Tr. 64-66). Upon such objection, the Hearing Examiner excluded most of the type of evidence now sought to be stricken.

3. Thereupon counsel supporting the complaint, on October 25, 1956, filed an interlocutory appeal from the ruling of the Hearing Examiner.

4. On November 8, 1956, attorneys for The Texas Company filed a brief in opposition to the interlocutory appeal, in which attention was called among other things to the proceedings in Docket No. 6487 against The Firestone Tire & Rubber Company and Shell Oil Company and the fact that the instant proceeding and the Firestone case were both before the same Hearing Examiner, and it was stated (at p. 15):

(421)

> "To compel that Examiner to hear in the present case evidence against Firestone without an opportunity by Firestone to defend itself and similarly to compel him to hear in the case against Firestone evidence against The Texas Company without an opportunity by The Texas Company to defend itself would, as a practical matter, be grossly unfair to both companies. Indeed, it would result in depriving both of these respondents in their respective cases of the basic requirements of due process of law."

5. The appeal of counsel supporting the complaint was sustained. Thereafter, in this proceeding there was admitted, over objection, both testimonial evidence and much documentary evidence relating to the issues and matters set out in sub-division A of this Motion.

Motion of the Texas Company to Withdraw Issues and to Strike Evidence

6. On November 13, 1957, counsel supporting the complaint in the instant proceeding rested. Theretofore, and particularly thereafter, the Hearing Examiner in the present proceeding, sitting as Hearing Examiner in the said proceeding against The Firestone Tire & Rubber Company and Shell Oil Company, received in evidence testimony and a large number of documents relating to the issues and matters set out in sub-division A of the present motion. The Texas Company is informed and believes that additional evidence relating to the same issues and matters will or may be introduced in the future in the said proceeding against The Firestone Tire & Rubber Company and Shell Oil Company. So (422) far two witnesses who had previously testified in the instant proceeding have been called to testify in the said proceeding against Firestone and Shell. The testimony of one such witness, William B. Price, purported in the latter case to cover among other things the same general fact situation purportedly covered in the instant case.

7. The Texas Company had and has no opportunity to object to any evidence offered in the proceeding against Firestone, or to cross-examine witnesses called in that proceeding, or to explain evidence introduced in that proceeding, or to reply to such evidence or to brief or argue such issues as may be created by such evidence.

The present situation places the Hearing Examiner in the unfortunate position of having to decide at the same time the same factual issues in two different cases upon similar but not identical evidence and without the safeguards attendant upon representation of all the parties affected in each case. While we are convinced that the Hearing Examiner will use his very best efforts to keep

the cases separate and apart, it would appear to be an impossible task to confine to each case the intangible factors leading to a decision of factual issues so that the evidence in the one case will have absolutely no effect (523) upon a decision in the other. This inherent difficulty would create a definite and unanswerable doubt as to what exact evidence contributed to the decision and hence as to the legal propriety of any decision rendered. Neither the Hearing Examiner nor the respondent should be placed in such a dubious position.

8. This situation, foreseen at the time when The Texas Company originally objected to the introduction of the evidence to which this motion is addressed and when The Texas Company filed its brief opposing the appeal from the Hearing Examiner's ruling excluding the evidence in question, has now materialized. Identical issues involving identical parties are being tried by the same Hearing Examiner without, however, the Examiner being able to afford to the parties affected the opportunities which the rules of this Commission, the Administrative Procedure Act, the Due Process Clause of the Constitution and the decisions thereunder, specifically afford a party to proceedings of the type here involved. In spite of the recognized fairness, impartiality and ability of the Hearing Examiner, the more or less simultaneous trials of the same issues, without affording the parties affected the usual safeguards, confront (424) the Hearing Examiner with a task beyond the best of human ability and make impossible any effort to apply to this proceeding the required judicial process.

In making its decision mentioned in paragraph numbered 5 above, the Commission doubtless assumed that the

situation presented by respondent would not arise. Unfortunately this assumption has proven to be incorrect. Therefore, we submit that a re-examination is now required. The Commission's previous ruling should not preclude the Hearing Examiner's consideration of a factual situation which did not actually exist—and which was, therefore, not known to the Commission—at the time of the Commission's decision.

9. Unless the present motion is granted, The Texas Company has not been and will not be afforded a fair trial and its rights and properties will be jeopardized thereby without due process of law. It is submitted that the Commission, when now apprised of the actual turn of events to which attention is here called, should view this existing situation in a different light from a situation merely expected, and should change its previous ruling as to (425) the admissibility of the evidence in question and should, therefore, grant this motion.

Dated: February 7, 1958.

MARION J. EPLEY, JR.
MARION J. EPLEY, JR.

ROYALL, KOEGEL, HARRIS & CASKEY
By Frederick W. P. Lorenzen
Attorneys for The Texas Company

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Order Denying Motion of the Texas Company to Withdraw Issues and to Strike Evidence

(February 24, 1958)

(430)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

This matter is before the hearing examiner upon motion of The Texas Company to withdraw from this proceeding any issue legal or factual relating to dealings, practices, contracts, agreements or arrangements between The Texas Company and The Firestone Tire & Rubber Company. It is respondent's contention that because of the reception of evidence by the same hearing examiner concerning contracts and dealings between The Texas Company and The Firestone Tire & Rubber Company in Docket No. 6487 in which The Texas Company was not a party, deprives the respondent of a right to a fair hearing.

The hearing examiner in making his initial decision must issue a finding of fact which must be based upon the record consisting of the testimony and other evidence in the proceeding in which such finding is made. It would be unlawful and in violation of the Administrative Procedure Act for the hearing examiner to give consideration to any matters not appearing in such record.

The motion of the respondent is based upon the premise that the hearing examiner cannot or will not proceed lawfully in the issuance of an initial decision in this proceeding. It is the opinion of the hearing examiner that there is no merit to respondent's contention.

IT IS THEREFORE ORDERED that the motion of The Texas Company to withdraw from this proceeding all issues,

Order Denying Motion of the Texas Company to Withdraw Issues and to Strike Evidence.

(431) legal or factual, involving or relating to dealings, practices, contracts, agreements or arrangements between The Texas Company and The Firestone Tire & Rubber Company and the operations of the parties to such agreements thereunder, and to strike from the record in this proceeding all evidence heretofore received in this case with respect to any of the issues or matters pertaining to The Texas Company and The Firestone Tire & Rubber Company be, and the same is hereby, denied.

EARL J. KOLB,
EARL J. KOLB,
Hearing Examiner

February 24, 1958.

• • •

Interlocutory Appeal by Respondent The Texas Company from Order of the Hearing Examiner Denying Its Motion to Withdraw Issues and to Strike Evidence

(March 6, 1958)

(434)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

COMES NOW respondent, The Texas Company, by its attorneys, and, pursuant to the provisions of Section 3.20 of the Commission Rules of Practice and Procedure, respectfully appeals from the ruling by the Hearing Examiner, dated February 24, 1958, and received by respondent on February 26, 1958, denying respondent's motion to withdraw issues and to strike evidence.

Motion for Extension of Time to Hear Appeal and File Further Briefs

Respondent moves, for the reasons hereinafter set forth, that the time to hear its appeal be extended until the Commission has determined the appeals *In the Matter of The Goodyear Tire & Rubber Company and The Atlantic Refining Company,* Docket 6486 (hereinafter sometimes referred to as *"Goodyear Atlantic"*) and *In the Matter of The Firestone Tire & Rubber Company and Shell Oil Company,* Docket 6487 (hereinafter sometimes referred to as *"Firestone-Shell"*).

(435) Respondent further moves that it be permitted to file, after the appeals in *Goodyear-Atlantic* and *Firestone-Shell* have been decided, further data and briefs in support of this appeal.

Interlocutory Appeal by Respondent The Texas Company from Order of the Hearing Examiner Denying Its Motion to Withdraw Issues and to Strike Evidence

Preliminary Statement

On February 7, 1958, respondent moved, before the Hearing Examiner, for an order (a) withdrawing from this proceeding all issues legal or factual involving or relating to dealings, practices, contracts, agreements or arrangements between respondent and The Firestone Tire & Rubber Company (hereinafter sometimes referred to as "*Firestone*") and the operations of the parties to such agreements thereunder, and (b) striking from the record in this proceeding all evidence theretofore received with respect to any of the issues or matters set out in (a).

The purpose of the motion was to assure respondent a fair trial and to prevent its rights and properties being jeopardized without due process of law.

The violation of these fundamental rights was occasioned by the fact that the Hearing Examiner in a separate proceeding,* in which this respondent is not represented, received evidence, documentary and oral, on one of the fact issues of this very proceeding.

The complaint herein challenges the trade practice known as the sales commission plan—a method of (436) marketing tires, batteries and accessories (collectively known as "TBA") by tire companies through oil company outlets. The tire company pays the oil company a commission for the sales assistance by the oil company in promoting the sale of TBA products to dealers selling the oil company's petroleum products.

The Commission brought three identical complaints attacking this practice, each naming as respondent a tire company and an oil company as parties to a sales commission arrangement (Dockets Nos. 6485, 6486 and 6487).

* The *Firestone-Shell* case, Docket No. 6487

Interlocutory Appeal by Respondent The Texas Company from Order of the Hearing Examiner Denying Its Motion to Withdraw Issues and to Strike Evidence

Each complaint alleged that the particular arrangement was an unlawful method of competition (Paragraph 12 of the Complaint). The complaints did not, however, confine their charges of illegality to the sales commission arrangement between the named respondents therein. Each complaint alleged that the named oil company respondent had another sales commission arrangement with another tire company (Paragraph 7 of the Complaint), and that the named tire company respondent had entered into other sales commission arrangements with other oil companies whose relations with their dealers were allegedly similar to those of the named oil company respondent (Paragraph 9 of the Complaint).

Since each complaint alleged sales commission arrangements involving persons who were not respondents, and the same Hearing Examiner was assigned to the three cases, there arose the novel situation of evidence which related to this respondent being introduced in a proceeding in which respondent was not a party before the very (437) Hearing Examiner who must determine the legality of respondent's acts. More particularly, the legality of the sales commission arrangement between Firestone and respondent is called into question both here and in the *Firestone-Shell* case in which this respondent is not represented.

The Hearing Examiner, sitting as Hearing Examiner in the *Firestone-Shell* case, received in evidence in that case testimony and many documents relating to the arrangement between respondent and Firestone. Two witnesses who testified in the instant proceeding were called to testify in the *Firestone-Shell* case, one of whom, William B. Price, purported in that case to cover, among other things, the same general fact situation purportedly covered in the instant case.

Interlocutory Appeal by Respondent The Texas Company from Order of the Hearing Examiner Denying Its Motion to Withdraw Issues and to Strike Evidence

At no time has this respondent had an opportunity to object to any evidence offered in the *Firestone-Shell* case, or to cross examine witnesses called in that proceeding, or to explain evidence introduced in that proceeding, or to reply to such evidence, or to brief or argue such issues as might be created by such evidence.

The introduction of evidence and testimony with respect to the Firestone-Texas relationship in the *Firestone-Shell* proceeding deprives respondent of due process, violates the Administrative Procedure Act and the rules of this Commission, and affords the basis of this interlocutory appeal.

(438) Respondent is presently preparing for the defense case and if the relief requested is granted, the scope of its defense will be reduced and the proceedings expedited. One of the reasons for prosecuting this interlocutory appeal is respondent's belief that the continuance of the violation of respondent's rights of due process is so fundamental that respondent cannot under these circumstances obtain the fair trial and due process of law to which it is constitutionally entitled.

The Former Interlocutory Appeal

When evidence as to the issues and matters relating to the arrangement between respondent and Firestone was first tendered in the instant proceeding by counsel supporting the complaint, respondent took detailed objection to all such evidence (Tr. 64-66). The Hearing Examiner thereupon excluded most of the type of evidence which is the subject of the present appeal and counsel in support of the complaint, on October 25, 1956, filed an interlocutory appeal from these rulings.

Interlocutory Appeal by Respondent The Texas Company from Order of the Hearing Examiner Denying Its Motion to Withdraw Issues and to Strike Evidence

Counsel in support of the complaint contended that the Examiner by his rulings excluding evidence relating to the agreement between respondent and Firestone had "precluded the development of the full effect on competition which has been occasioned by Texas' participation in the challenged method of competition" (Int. App. 10-11).*

(439) Counsel in support of the complaint further stated (Int. App. 11):

> "It is clear, therefore, that the effects created by both agreements have a direct bearing in the establishment and proof of the charges against Texas."

and stated (Int. App. 17):

> "No one can gain a proper perspective of the actual and potential effects of the questioned method of doing business unless all ramifications of the relationship existing between Texas and both rubber companies under the TBA commission arrangements are fully presented."

In its brief, filed November 8, 1956, in opposition to complainant's interlocutory appeal, respondent directed attention to, among other things, the *Firestone-Shell* case and expressly noted that that case and the instant one were both before the same Hearing Examiner.

Respondent stated in this brief (at p. 15):

> "To compel that Examiner to hear in the present case evidence against Firestone without an opportunity by Firestone to defend itself and similarly to compel him to hear in the case against Firestone evidence against

* "Int. App." refers to the Interlocutory Appeal Brief of counsel in support of the complaint, filed on October 25, 1956.

Interlocutory Appeal by Respondent The Texas Company from Order of the Hearing Examiner Denying Its Motion to Withdraw Issues and to Strike Evidence

> The Texas Company without an opportunity by The Texas Company to defend itself would, as a practical matter, be grossly unfair to both companies. Indeed, it would result in depriving both of these respondents in their respective cases of the basic requirements of due process of law."

The Commission, however, on November 28, 1956 sustained the appeal of counsel supporting the complaint and thereafter, over objection, there was admitted in evidence in this proceeding testimonial and documentary evidence relating to the arrangement between respondent and Firestone.

At the time the Commission made its decision, (440) November 28, 1956, the situation now presented had not arisen. The introduction of evidence, documentary and testimonial, relating to the arrangement between respondent and Firestone before the Hearing Examiner of this complaint in a proceeding in which respondent was not represented had not occurred.

Motion to Extend Time to Hear Appeal

The issues raised by this motion are similar, in many respects, to those raised by the interlocutory appeal of *Firestone,* Docket No. 6487, and the interlocutory appeal of *Goodyear,* Docket No. 6486, each of which is presently pending before the Commission. Since the issues in those proceedings are in many respects similar to those presented by this interlocutory appeal, respondent moves that the time to hear its appeal be extended until the Commission has determined the interlocutory appeals in Docket numbers 6486 and 6487.

Interlocutory Appeal by Respondent The Texas Company from Order of the Hearing Examiner Denying Its Motion to Withdraw Issues and to Strike Evidence

Respondent further requests an opportunity to file, after those appeals have been determined, further data and briefs in support of this interlocutory appeal.

Request for Oral Argument

The issues raised on the motion and on this appeal are of such importance that we respectfully request the privilege of oral argument before the Commission.
(441)

Statement of Issue

Is respondent deprived of due process of law—and is the Admnistrative Procedure Act violated—by the Hearing Examiner in the instant proceeding hearing evidence—documentary and testimonial—relating to the arrangement between respondent and Firestone in a proceeding to which respondent is not a party?
(442)

POINT I

Respondent's rights under the Constitution and the Administrative Procedure Act are violated by the Hearing Examiner considering, in a separate proceeding, evidence bearing on the issues in this case.

Respondent is not a party to the *Firestone-Shell* case; it cannot meet and refute evidence relating to its arrangement with Firestone that has been introduced in that proceeding. A considerable number of documents relating to the arrangement between respondent and Firestone were admitted into evidence, before the same Hearing Examiner who is sitting in the instant case, in a proceeding in which

respondent has no standing either to object or to refute evidence that relates to the very matter here in issue.

We know of no authority that lends support to such an extraordinary procedure. Indeed, such a unique method of procedure is clearly inconsistent with at least the spirit of the provisions of the Administrative Procedure Act, falling within the express condemnations of Section 5(c) of that Act which provides in part:

> "Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer [hearing officer] shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate."

The Hearing Examiner by considering evidence and hearing argument of counsel in another case on matters relating (443) to the arrangement between respondent and Firestone is considering facts relevant to the issues in this proceeding without the opportunity for respondent to participate. This is certainly more injurious to the respondent than a mere consultation by the Examiner would be.

The vice of the Hearing Examiner considering the evidence relating to the arrangement between respondent and Firestone in a proceeding in which respondent is not a party is high-lighted by the fact that such evidence is deemed by counsel supporting the complaint to be essential in a determination of the present proceeding. Counsel, in support of the complaint, stated that the effects created by that agreement has "a direct bearing in the establishment and proof of the charges against Texas" (Int. App. 11) and that no one could gain a proper perspective of the actual and potential effects of the sales commission pro-

gram "unless all ramifications of the relationship existing between Texas and both rubber companies under the TBA commission arrangements are fully presented" (Int. App. 17).

However, certain of these ramifications are being developed before the present Hearing Examiner in a proceeding in which respondent is not a party and, we submit, that under the Administrative Procedure Act the Hearing Examiner may not properly hear such evidence ex parte to this proceeding.

In order to prevent the respondent's rights being jeopardized by such ex parte receipt of evidence, it is (444) necessary to withdraw from the present proceeding the issues relating to respondent's arrangement with Firestone and all evidence with respect thereto.

If the Commission had intended that evidence relating to this respondent should be introduced in a proceeding in which respondent was not a party it undoubtedly would have assigned such proceeding to a Hearing Examiner other than the one assigned to the instant proceeding. It is wholly undesirable for the same person at the same time to hear evidence relating to the same issues in different proceedings.

It is familiar law that the hearing officer is not to consider evidence introduced outside the confines of the case before him. Thus, the Supreme Court in *Carter* v. *Kubler,* 320 U. S. 243 (1943) in discussing the action of a conciliation commissioner fixing a valuation which was partly on the basis of his personal investigation stated (at p. 247):

> "The basic elements of such a hearing include the right of each party to be apprized of all the evidence upon which a factual adjudication rests, plus the right

> to examine, explain or rebut all such evidence. * * * It was apparently made without petitioner's knowledge or consent and no opportunity was accorded petitioner to examine or rebut the evidence obtained in the course of such investigation. The use of this evidence was therefore inconsistent with the right to a fair and full hearing."

It is no answer to say that the Hearing Examiner will do his best not to be influenced by such evidence he has heard under oath in a proceeding in which respondent is (445) not represented. Thus the Court in *Mozer* v. *Mortgage Guarantee Co.*, 9 Cir., 123 F. 2d 423 (1941) cogently stated the danger of this (p. 425):

> "What influence the evidence taken outside the hearing, proper or improper, may have had upon the conclusion reached by the commissioner, or what counter effect cross-examination or rebuttal testimony would have had upon such conclusion, can never be known."

See also *United States* v. *Dillman*, 5 Cir., 146 F. 2d 572, 574, 575 (1945), *cert. den.* 325 U. S. 870 (1945).

Once it is conceded that a Hearing Examiner in such a situation cannot avoid importing knowledge received from the one proceeding into his decision with respect to the other, it is clear that the unrepresented party is denied the right to appear by counsel, the right to conduct cross examination, and the right that the proceeding against him be decided only on the record of that proceeding (Administrative Procedure Act, §§6(a), 7(c) and 7(d); §3.16(b) Commission Rules of Practice and Procedure).

(446)

POINT II

The Hearing Examiner's ruling is based on an erroneous premise.

The present situation places the Hearing Examiner in the unfortunate position of having to decide at the same time the same factual issues in two different cases upon similar but not identical evidence and without the safeguards attendant upon representation of all the parties affected in each case. While we are convinced that the Hearing Examiner will use his very best efforts to keep the cases separate and apart, it would appear to be an impossible task to confine to each case the intangible factors leading to a decision of actual issues so that the evidence in the one case will have absolutely no effect upon a decision in the other. This inherent difficulty would create a definite and unanswerable doubt as to what exact evidence contributed to the decision and hence as to the legal propriety of any decision rendered. Neither the Hearing Examiner nor the respondent should be placed in such a dubious position. In spite of the recognized fairness, impartiality and ability of the Hearing Examiner, the more or less simultaneous trials of the same issues, without affording the parties affected the usual safeguards, confront the Hearing Examiner with a task beyond the best of human ability and make impossible any effort to apply to this proceeding the required judicial process.

(447)

The fact that the Hearing Examiner is supposed to confine his determination to the record does not assure

that this can, in fact, be done in the present situation. It expects too much to assume that a person can isolate the impressions, information and subjective responses derived from the evidence in one case from another case being tried at the same time involving the same issues.

CONCLUSION

Unless the motion by respondent is granted, The Texas Company cannot be afforded a fair trial and its rights and properties will be jeopardized without due process of law.

It is submitted that the Commission when now apprized of the actual turn of events, to which attention is here called, should view the existing situation in a different light from the situation presented to it upon the Interlocutory Appeal of October 1956 and should order that all issues relating to the arrangements between respondent and Firestone be withdrawn from this proceeding and strike from the record all evidence to any of such issues or matters.

Dated: March 6, 1958.

Respectfully submitted,

MARION J. EPLEY, JR.
MARION J. EPLEY, JR.

ROYALL, KOEGEL, HARRIS & CASKEY
By Frederick W. P. Lorenzen
Attorneys for The Texas Company

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Order Denying Interlocutory Appeal

(March 26, 1958)

(464)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Commissioners:

John W. Gwynne, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern
Edward T. Tait

[SAME TITLE]

Respondent, The Texas Company, having filed with the Commission an interlocutory appeal from the hearing examiner's ruling of February 24, 1958, denying its motion to withdraw from this proceeding any issue as to dealings, practices, contracts, agreements or arrangements between The Texas Company and The Firestone Tire & Rubber Company, and to strike all evidence heretofore received in this case with respect to any such issue; and

It appearing that it is the respondent's contention that because of the reception of evidence by the same hearing examiner, concerning contracts and dealings between The Texas Company and The Firestone Tire & Rubber Company in both this proceeding and Docket No. 6487 in which The Texas Company is not a party, this respondent is deprived of a fair hearing; and

It further appearing that the question thus presented was considered and in effect determined adversely to the

Order Denying Interlocutory Appeal

respondent in the Commission's disposition on November 28, 1956, of an interlocutory appeal theretofore filed by counsel in support of the complaint from rulings of the (465) hearing examiner excluding from the record evidence of the type here involved; and

The Commission being of the opinion that the aforesaid determination of the question renders unnecessary its further consideration at this time:

It Is Ordered that the respondent's appeal, together with its motion for deferment of decision thereof and for permission to file additional briefs and its request for oral argument, be, and they hereby are, denied.

By the Commission.

Robert M. Parrish,
Robert M. Parrish,
Secretary.

Issued: March 26, 1958

Proposed Findings of Fact and Conclusions Filed by Respondent, The Texas Company

(April 1, 1959)

(651)

39.

Respondent Texas called to testify 54 Texaco dealers[1] and 5 ex-Texaco dealers;[2] these witnesses came from 13 of

1. [Set out in footnotes (1) and (2) of this Finding 39 are the transcript pages and the names of those dealer witnesses who testified; for the sake of brevity, all subsequent citations in this Finding 39, will be to the transcript page only—the dealer who testified can be determined by reference to footnotes (1) and (2)].

2345-77 (Livingston)
2378-2404 (Midden)
2407-50 (Smiley)
2472-84 (Baird)
2485-2500 (O'Brien)
2501-19 (Bonacci)
2571-99 (Jacobson)
2600-15 (Rittenhouse)
2616-29 (Allen)
2629-47 (Swank)
2647-61 (Bolte)
2662-77 (Novak)
2778-95 (Nemec)
2796-2815 (McGuire)
2817-38 (Delle Grazie)
2839-61 (Roessner)
2927-38 (Spradling)
2938-55 (Pryor)
3020-22
2955-69 (Rogers)
2970-84 (Mayers)
2985-3003 (Bates)
3004-19 (Retke)
3022-39 (Patterson)
3040-53 (Tubbs)
3054-68 (Holm)
3069-85 (Burnett)
3088-3105 (Hummel)

2.

2451-71 (Brooks)
3416-27 (Barker)
3448-76 (Moss)
3120-38 (Hendrickson)
3139-62 (Whiting)
3162-82 (Toothman)
3182-99 (Capolupo)
3200-8 (McCue)
3211-32 (Sizemore)
3233-50 (Llewellyn)
3254-76 (Bailey)
3278-96 (Lane)
3297-3306 (Leonard)
3308-25 (Crawford)
3325-47 (Neufeld)
3347-60 (Mandell)
3361-84 (De Ambra)
3385-99 (Johnston)
3400-15 (Linton)
3428-34 (Ellington)
3435-46 (Franklin)
3495-3506 (Conner)
3592-3604 (Chiles)
3606-20 (Worsham)
3621-41 (Heth)
3657-70 (Jernigan)
3670-91 (McGahey)
3722-35 (Eubanks)
3736-51 (McAnally)
3753-66 (Helcamp)

3477-94 (Embry)
3642-56 (Moore)

the 15 sales divisions of Texas, the two divisions not so represented were the Pacific Coast Divisions to which there was no reference in the hearings. These witnesses (652) came from cities,[3] towns[4] and villages;[5] some operated small stations,[6] some medium-sized stations,[7] and some large stations;[8] some were successful and did large volumes of business,[9] and some operated small businesses;[10] some were leaders in their communities,[11] others were influential in dealer organzations;[12] some had been dealers for many years;[13] others had become dealers relatively recently.[14]

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3. 2346; 2378; 2407; 2451; 2472; 2485; 2501; 2571; 2648; 2662; 2817; 2839; 2970; 3004; 3023; 3183; 3254; 3278; 3325; 3347; 3361; 3385; 3401; 3416; 3435; 3621; 3642; 3657.

4. 2600; 2616; 2630; 2796; 2956; 2985; 3040; 3054; 3069; 3088; 3134; 3163; 3200; 3211; 3297; 3308; 3448; 3477; 3495; 3592; 3606; 3670; 3736; 3753.

5. 2927; 2938; 3429.

6. 3142; 3164; 3297; 3462.

7. 2472; 2486; 2502; 2617; 2648; 2818; 2956; 2970; 3004; 3021; 3041; 3089; 3308; 3402; 3429; 3495-6; 3593; 3606; 3649; 3722.

8. 2346; 2381; 2408; 2471; 2571-2; 2631; 2664; 2779; 2796; 2840; 2928; 2986; 3023; 3070; 3120; 3183-4; 3200; 3234; 3265; 3279; 3326; 3348; 3362; 3388; 3417; 3436; 3479; 3621; 3657; 3682; 3746; 3755.

9. 2367; 2439; 2484; 2778; 2840; 2930-1; 2995; 2999; 3200; 3293; 3302; 3364; 3445-6; 3736-7; 3755.

10. 2837-8; 2944; 3047; 3142; 3182; 3613-4; 3732-3.

11. 2839; 3429; [and see offer of proof 3417].

12. 2402; 3192; 3221-2; 3757.

13. 2379; 2408; 2501; 2617; 2840; 2939; 2970; 3070; 3142; 3164; 3183-4; 3200; 3211; 3233; 3254; 3297; 3308; 3326; 3348; 3385; 3592-3; 3753.

14. 2571; 2630; 2648; 2779; 2808; 2818; 3014; 3120; 3278; 3401; 3477-8.

Proposed Findings of Fact and Conclusions Filed by Respondent, The Texas Company

Their purchases of TBA products showed a like diversity (Appendix A annexed hereto). With a single exception referred to below, all openly handled some TBA not in the Goodrich or Firestone lines (fn. 24, 25, *infra*). Fifteen of these dealers carried no sponsored tires,[15] thirty-four carried no sponsored batteries,[16] twenty-nine carried no sponsored (653) accessories,[17] fifteen carried no sponsored tires and batteries,[18] and twenty-three carried no sponsored batteries and accessories.[19] All testified:

(a) That they fully understood their right as dealers of Texaco petroleum products and as lessees to handle any brands of TBA which they thought best for their own operation.[20]

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15. 2347; 2618; 2665, 2670; 2942, 2943, 2944, 2947; 3057; 3092, 3093, 3094; 3134; 3143; 3213; 3256; 3298; 3496; 3607, 3611; 3738-40; 3754-5.

16. 2347; 2384, 2391; 2413, 2414, 2426; 2618; 2635, 2645; 2665, 2670; 2843; 2929; 2942, 2943, 2947; 3026; 3045; 3061; 3071, 3072; 3092, 3093, 3094, 3096; 3123-4; 3143; 3165-6; 3186; 3213, 3216; 3256; 3281; 3298; 3330; 3349, 3359-60; 3364-5; 3387; 3401, 3404, 3405-6; 3430; 3496; 3594; 3607; 3725, 3726, 3727; 3740; 3754-5.

17. 2489, 2494; 2506-7; 2618-9; 2651; 2665, 2670; 2932; 2943, 2944, 2947; 2992; 3046; 3063; 3092, 3093, 3094; 3132-3; 3143; 3166-7, 3180; 3190; 3207; 3239; 3215; 3256-7, 3265; 3298; 3310; 3349; 3388, 3390-1; 3404-5; 3430; 3607; 3726, 3727; 3741-2; 3754-5.

18. 2347; 2618; 2665, 2670; 2942, 2943, 2944, 2947; 3057, 3061; 3092, 3093, 3094; 3134; 3143; 3213, 3216; 3256-7; 3298; 3496; 3067, 3611; 3738-40; 3754-5.

19. 2618-9; 2665, 2670; 2929, 2932; 2942, 2943, 2944, 2947; 3045, 3046; 3061; 3092, 3093, 3094, 3096; 3132-3, 3143; 3165, 3166-7, 3180; 3186, 3190; 3213, 3215, 3216; 3256-7, 3265; 3298; 3349, 3359-60; 3388, 3390-1; 3401, 3404, 3405-6; 3430; 3594; 3607; 3725, 3726, 3727; 3740, 3741-2; 3754-5.

20. 2358; 2382; 2412; 2457; 2458; 2487; 2502-3; 2572-3; 2574; 2601-2; 2618; 2631-2; 2649; 2665; 2797; 2819-20; 2841; 2929; 2941; 2956-7; 2972; 2986; 3005; 3024; 3041; 3055; 3071; 3092; 3127; 3146; 3169; 3185; 3202; 3215; 3241; 3264; 3286-7; 3298-9; 3315; 3327; 3350; 3363; 3386; 3402; 3418; 3429; 3436; 3450; 3480; 3499; 3599-3600; 3610; 3622; 3643-4; 3658; 3675; 3723; 3738; 3755.

(b) That they had experienced no effort to compel them to purchase Goodrich or Firestone TBA[21] and had never heard of a dealer in Texaco products who had experienced any such pressure,[22] nor had they heard of anyone complain that any such compulsion had been used or threatened although they attended meetings at (654) which great numbers of other dealers in Texaco products were present.[23]

(c) That they handle TBA products other than those in the Goodrich and Firestone lines[24] (except one,

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21. 2348; 2383; 2385; 2420, 2448; 2459, 2461, 2462; 2478; 2487, 2488, 2495; 2503; 2574; 2603; 2618; 2632; 2636; 2649; 2665-6; 2781, 2793; 2798; 2819-20; 2842; 2932; 2947; 2957; 2972; 2979; 2987, 2990; 3005, 3013; 3024; 3042; 3056; 3071, 3078-9; 3091, 3097; 3127; 3146, 3147; 3168, 3175-6; 3188, 3204; 3219, 3241; 3263; 3288; 3298; 3314; 3327; 3350; 3363, 3372; 3391, 3402, 3408-9; 3431; 3453-4; 3482-3; 3499; 3597; 3624; 3646; 3675; 3726, 3727-8; 3740; 3756.

22. 2625; 2831-2; 2848; 2936; 2950; 2964; 2979; 3013; 3033; 3050; 3066; 3082; 3099; 3131; 3152-3; 3171, 3193; 3205; 3222; 3268, 3290; 3299-3300; 3340; 3357; 3374; 3393; 3411; 3424; 3440; 3457; 3502; 3599; 3613; 3632; 3651; 3667; 3682; 3730, 3745.

23. 2624, 2625; 2831, 2832; 2848, 2849; 2936; 2950; 2964; 2979; 3013; 3033, 3049, 3050; 3065; 3081, 3082; 3098, 3099; 3130, 3131; 3152, 3153-4; 3170, 3171; 3191, 3192, 3193; 3205; 3222, 3267, 3268; 3289, 3290; 3299-3300; 3320-1; 3339-40; 3356-7; 3374; 3392-3; 3410-1; 3424, 3440; 3456-7; 3501-2; 3599; 3611, 3612-3; 3631-2; 3650-1; 3667; 3681-2; 3729-30; 3743, 3744-5.

24. 2346, 2347; 2380, 2384, 2385, 2390, 2393; 2414, 2426, 2427, 2429, 2430-1, 2435; 2460-1, 2462; 2474, 2475, 2476, 2477; 2489, 2494, 2495; 2503, 2504, 2505, 2506, 2507, 2508, 2511; 2512; 2575, 2576, 2577, 2578, 2579, 2586, 2587, 2588; 2603, 2604; 2618, 2619; 2633, 2634-5, 2642, 2645, 2646; 2649-50, 2654, 2659; 2665, 2666, 2667; 2781, 2782, 2783, 2794, 2795; 2798, 2799, 2807, 2813; 2821-2, 2823-4, 2826, 2830, 2831; 2842, 2843; 2930, 2932; 2942, 2943; 2957; 2972-3, 2974, 2978; 2987, 2988, 3005, 3006, 3007; 3025, 3026; 3045, 3046; 3056, 3057, 3062, 3063; 3071, 3072; 3093, 3094; 3143, 3144, 3145; 3165, 3166, 3167; 3187; 3202, 3203, 3207; 3215, 3216; 3239,

an ex-dealer, who was so sold on the Firestone quality and the desirability of confining his TBA purchases to one line,[25] that he did so; he was a person of substance and standing in the community who fully understood his freedom of choice; he subsequently bought his own garage and still sells Firestone TBA).[26]

(d) That they openly display all TBA products, irrespective of the brand which they handle.[27]

(655)

(e) That their TBA purchasing and displaying practices did not affect their relationship with Texas and did not result in any discrimination or threat of

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3240, 3242-3, 3256-7, 3265, 3276; 3285, 3292; 3298, 3303; 3310, 3311; 3328, 3329, 3330, 3331, 3340, 3341; 3349, 3355, 3356, 3364, 3365; 3388, 3389, 3394, 3395, 3396, 3397, 3398; 3404, 3405-6, 3408; 3430; 3437; 3450, 3452, 3455-6; 3480, 3483, 3484; 3496, 3497; 3593, 3594, 3598; 3607; 3624, 3625, 3627-8, 3634-5; 3646-7, 3648, 3655; 3664, 3665; 3672, 3674, 3676, 3677; 3725-6, 3727; 3738, 3739, 3741, 3742; 3754-5, 3756, 3765. Certain of the dealers even acted as wholesalers for competing lines (3135; 3167; 3261; 3303; 3364; RX 68 A-C).

25. 3420, 3421.

26. 3425.

27. 2350; 2385, 2391; 2416; 2460-1, 2462; 2473-4, 2477; 2489, 2492, 2495, 2506, 2507, 2510; 2578, 2579; 2604, 2605; 2624; 2636, 2641; 2651; 2667, 2669; 2784, 2791, 2792; 2799, 2800; 2822-3, 2825; 2844; 2930, 2931, 2934; 2949; 2960; 2975, 2988, 2990; 3006, 3008, 3009; 3026, 3028, 3030; 3046; 3057, 3059; 3074, 3077; 3096, 3125-6; 3145; 3167, 3171; 3188-9, 3194; 3204; 3216-17; 3257, 3258; 3283-4, 3285, 3290-1; 3316, 3317; 3333, 3334; 3351; 3356, 3374-5; 3389; 3403, 3408; 3431-2, 3433; 3452, 3453, 3457; 3493; 3500; 3595, 3596; 3608, 3609; 3626; 3646-7; 3674, 3676, 3677, 3679; 3727; 3742; RX 11, 18, 19, 20, 37A-G, 38A-G, 40, 41, 42A-D, 43A-D, 44, 45A-B, 46A-C, 47A-B, 48A-C, 49A-B, 50, 51, 52, 57A-B, 58, 59, 60, 61, 62, 63A-C, 64A-C, 65A-B, 66A-C, 67, 69A-B, 70A-B, 71, 72A-B, 73A-D, 74.

discrimination by Texas.[28] Indeed, dealers received leases for new or improved stations or had their stations remodelled at a time when they were actively handling, promoting and displaying substantial quantities of TBA lines which were neither Goodrich nor Firestone and they continued to handle such lines in their new or improved stations.[29]

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28. 2348, 2349, 2358; 2380-1, 2383, 2385, 2391, 2393; 2415, 2416, 2419, 2420, 2448; 2461, 2462, 2464; 2473, 2477, 2478; 2487, 2488, 2495; 2503, 2510, 2511; 2575-6, 2579; 2603; 2618, 2624; 2632, 2636, 2641-2; 2649, 2653, 2654; 2665, 2666, 2669; 2781, 2784, 2789; 2798, 2800, 2802; 2820, 2825-6, 2831; 2842, 2844, 2847; 2929, 2932, 2934; 2941, 2947; 2957; 2972, 2975, 2976, 2979; 2987, 2990, 2992; 3005, 3010, 3013; 3024, 3027, 3030, 3032; 3042, 3046; 3055, 3056, 3063, 3064, 3065; 3071, 3078-9; 3097; 3124, 3125-6, 3127, 3129; 3145, 3146, 3147, 3151; 3168, 3169-71; 3188, 3189; 3204; 3214-5, 3219, 3220; 3241; 3263, 3264; 3286-7, 3288; 3298-3300; 3315, 3320; 3326, 3327, 3331-2, 3333-4, 3337; 3338; 3350, 3353, 3363, 3371, 3372; 3386, 3388, 3391, 3393; 3401-2, 3408-10; 3418, 3420; 3429, 3431, 3433; 3436-7; 3450, 3453-4, 3480, 3482-3; 3499; 3597, 3598, 3599-600; 3610; 3622, 3624, 3630; 3646, 3647; 3657-8, 3665; 3674, 3675-6, 3679; 3723, 3727-8; 3742-3; 3756.

29. 2379-80; 2433; 2652, 2928-9; 2939-40; 3092; 3147-8, 3175-6; 3186; 3722, 3725, 3726, 3727; 3740. See also 3372.

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40.

(656) Many lessee dealers of Texas who testified handled no Firestone or Goodrich TBA at all under the sales commission contracts but actively promoted other lines which, in their respective locations, appeared to them best for their business.[1] The extent to which Texaco dealers generally promoted other TBA lines is reflected in the evidence showing that Texaco dealers referred to in this proceeding handled 51 different brands of batteries[2] and 27 different brands of tires, including Goodrich and Firestone.[3]

1. Allen 2618; Novak 2665; Pryor 2943, 2947; Holm 3062, 3063; Hummel 3093; Whiting 3143; Sizemore 3213, 3215, 3219-20; Bailey 3256, 3257; Eubanks 3726-7; McAnally 3741, 3742; Helcamp 3754-5. For all practical purposes, there are other lessee dealers in this same category. Livingston 2346, 2347; Spradling 2930-1; Tubbs 3044; Toothman 3165, 3180; Conner 3496, 3498; Chiles 3594. Another example of the extent to which competing TBA succeeds in leased stations may be found in District Manager West's testimony that in his central Alabama district only nine or ten out of the twenty-three leased stations handled Firestone or Goodrich TBA (West 3697, 3981). When West was Zone Manager in Southern Alabama only nine or ten of his thirty lessee dealers handled Firestone or Goodrich TBA (West 3967, 3980). In both those areas the leased stations that did handle Firestone or Goodrich also handled other TBA as well (West 3981).

2. Brand of Battery

ALLIED	Hancock RX 74, p. 1; Howerton RX 74, p. 5; Waggoner RX 74, p. 18; Gann RX 74, p. 18.
AM PLUS	Nemec 2782, 2785, 2790-1, RX 51.
AUTO-LITE	Smiley 2427, RX 40; Bonacci 2504; Jacobson 2575, 2583, 2598, RX 42B; Allen 2618-9, 2622, RX 43C, D; Swank 2645; McGuire 2799, 2813; Delle Grazie 2821-2; Rogers 2958; Tubbs 3045; Sizemore 3217, RX 66B, C; Lane 3280, 3283-5, RX 69A; Leonard 3298; Crawford 3310-11, RX 70B; Mandell 3349, 3359-60, RX 72B; Morgan RX 74, p. 2; Hopkins RX 74, p. 9; Terrell RX

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	74, p. 17; Buckholtz RX 74, p. 22; McKinney RX 74, p. 26; Thomas RX 74, p. 39.
BOWER	Rittenhouse 2603; McCue 3202; Linton 3404; Moss 3450, 3453.
CHAMPION	Jernigan 3659; Heard RX 74, p. 1; Johnston RX 74, p. 3; Smith RX 74, p. 3; Hale RX 74, p. 4; Lawing RX 74, p. 4; Nabors RX 74, p. 4; Brown RX 74, p. 7; Vincent RX 74, p. 8; Montgomery RX 74, p. 10; McCollum RX 74, p. 14; Johnston RX 74, p. 17; Ihnfeldt RX 74, p. 30; McKamey, I. L., RX 74, p. 32; Kitchens RX 74, p. 32; McKamey, Ira RX 74, p. 32; Smith RX 74, p. 36.
CHIEFTAN	McGlasson RX 74, p. 9.
CONTINENTAL	McMillen RX 74, p. 10; Fowler RX 74, p. 11; Brookfield RX 74, p. 12; Wilcoxen RX 74, p. 16; Waters RX 74, p. 16; Lewis RX 74, p. 16; Winfrey RX 74, p. 16; Yarbrough RX 74, p. 16; Jolly RX 74, p. 27; Toon RX 74, p. 30; Braley RX 74, p. 34; Tosch RX 74, p. 36.
DELCO	O'Brien 2488-9; Bonaeci 2504-5; Jacobson 2575; Bolte 2649-50; 2651; Novak 2666, 2667, 2668, RX 45A, B; Delle Grazie 2821-2; Pryor 2940, 2942, 2943, RX 58; Mayers 2973; Bates 2989, 2999; Retke 3007; Holm 3062; Burnett 3071-2; 3074-5, 3077, RX 63B; Hummel 3091; Toothman 3164-6; McCue 3202; Sizemore 3216; Llewellyn 3242-3; Lane 3280; Mandell 3349, 3359-60, RX 72B; Johnston 3387; Linton 3401, 3404-6, 3411; Ellington 3430-2; Conner 3496-7; Heth 3624, 3626, 3628; Swatsell RX 74, p. 2; Felts RX 74, p. 2; Kennedy RX 74, p. 2; Hale RX 74, p. 4; Langford RX 74, p. 5; Crutchfield RX 74, p. 5; Weaver RX 74, p. 5; Kendall RX 74, p. 6; Eudy RX 74, p. 6; McNabb RX 74, p. 6; Tate RX 74, p. 8; Houston RX 74, p. 8; Smith RX 74, p. 9; Massey RX 74, p. 12; Clinton RX 74, p. 14; Krahl RX 74, p. 14; Lytle RX 74, p. 15; Oliver RX 74, p. 17; Moughan RX 74, p. 18; McDaniel RX 74, p. 19; Ruess RX 74, p. 20; Pritchett RX 74, p. 20; Stine RX 74, p. 20; Maples RX 74, p. 20; Franklin RX 74, p. 20; Stephens RX 74, p. 21; Meek RX 74, p. 21; Graves RX 74, p. 21; Jones RX 74, p. 22; Clancy & Arnold RX 74, p.

	22; Moses RX 74, p. 23; Nesom RX 74, p. 23; Herrington RX 74, p. 23; Barger RX 74, p. 24; Kalil RX 74, p. 24; Rey RX 74, p. 24; Hendrix RX 74, p. 24; Gleason & Shields RX 74, p. 25; Vervach Bros. RX 74, p. 25; Fisher RX 74, p. 25; Baver RX 74, p. 25; Hill RX 74, p. 26; Reynolds RX 74, p. 26; Baker RX 74, p. 26; Tacker RX 74, p. 27; Fowler RX 74, p. 27; Greer RX 74, p. 28; Harris RX 74, p. 29; Gatlin & Turbyfill RX 74, p. 30; Flatt RX 74, p. 30; Roberts RX 74, p. 31; Dickerson RX 74, p. 32; Brown RX 74, p. 32; Braley RX 74, p. 33; Bunn RX 74, p. 33; Sheppard & Cooke RX 74, p. 34; Taylor RX 74, p. 34; Hobson RX 74, p. 35; Ross RX 74, p. 35; Lawrence & Phillips RX 74, p. 35; Reynolds RX 74, p. 35; Sandmire RX 74, p. 35; Vaughn RX 74, p. 36; Prater RX 74, p. 36; Aman RX 74, p. 39; Matherly RX 74, p. 40; Macaluso RX 74, p. 40; Dunn & Evans RX 74, p. 40; Hood RX 74, p. 41; Bell RX 74, p. 41; Sloan RX 74, p. 42.
DIXIE	Hill RX 74, p. 28.
DOUGLAS	Sizemore 3216.
DUNLOP	Warwick RX 74, p. 34.
EXCELL	McGahey 3671, 3672, 3676-7.
EXCELLO	Conner 3496-7.
EXIDE	Bonacci 2504; Tubbs 3045, 3121; Hendrickson 3123; Neufeld 3330, 3334, RX 71; Mandell 3359-60; McGahey 3677; McNabb RX 74, p. 6; Clough RX 74, p. 7; Colville RX 74, p. 7; Brown RX 74, p. 7; Cunningham RX 74, p. 8; Towner RX 74, p. 8; Cheely RX 74, p. 9; Kimmel RX 74, p. 9; Pearson RX 74, p. 9; Goldston RX 74, p. 10; Fletcher RX 74, p. 10; Boen RX 74, p. 11; Davis RX 74, p. 10; Hinkel RX 74, p. 10; Cooper RX 74, p. 17; Pope RX 74, p. 30; Porterfield RX 74, p. 39; Hardin RX 74, p. 40; Sparks RX 74, p. 42; Hughes RX 74, p. 42.
FLEET	McDonald RX 74, p. 6; Janes RX 74, p. 6; Zimmerman RX 74, p. 21.

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FORD	Gibson RX 74, p. 1.
GATES	Toothman 3164-6, 3175, 3168, RX 65A, B; Bailey 3256, 3261; Moss 3454-5; Long RX 74, p. 6; Lee RX 74, p. 28.
GOODYEAR	Moody RX 74, p. 1; Mize RX 74, p. 12; Miller RX 74, p. 15; Fox RX 74, p. 19; Mosier RX 74, p. 26; Lawson RX 74, p. 41.
GOULD	Johnson RX 74, p. 17; Renegar RX 74, p. 19; Porter RX 74, p. 19; Meador RX 74, p. 20; Miller RX 74, p. 23.
GRANT	Patterson 3026, 3030-1; Tubbs 3045; Holm 3061; Hummel 3092-3, 3096; Wells RX 74, p. 26.
HESTER	Chiles 3594-6; Ward RX 74, p. 25.
MERCURY	McClure RX 74, p. 11.
MOTREX	Bell RX 74, p. 41.
MULE	De Ambra 3364-5.
NATIONAL	Bonacci 2504; Swank 2635, 2645, RX 44; Johnston 3387, 3389, 3393, 3396; Moss, L. R. 3458; Ross RX 74, p. 5; Moss, H. M. RX 74, p. 11; Brookfield RX 74, p. 12; Place RX 74, p. 27; Newman RX 74, p. 40; Hughes RX 74, p. 42.
NIC-L-LYTE	Tune RX 74, p. 7; Norris RX 74, p. 10.
NIC-L-SILVER	McNabb RX 74, p. 12; Pierce RX 74, p. 12; Boans RX 74, p. 39; Porterfield RX 74, p. 39; Lewis RX 74, p. 39; Drake RX 74, p. 40; Sims RX 74, p. 41; Rey RX 74, p. 41; Hood RX 74, p. 41; Ellis RX 74, p. 41.
PARKS	Fly RX 74, p. 13; Elmore RX 74, p. 13; Glass RX 74, p. 13; Nicols RX 74, p. 13; Clinton, D. M. RX 74, p. 13; Clinton J. C. RX 74, p. 14; Honea RX 74, p. 14.
PENNSYLVANIA	Collier RX 74, p. 33; Taylor RX 74, p. 33.
PHILLIPS	Stegall, RX 74, p. 7.
POWERLIFE	Lamb RX 74, p. 24.

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PRESTOLITE	Corrotto RX 74, p. 25.
RED BALL	Tate RX 74, p. 8.
RED DIAMOND	Livingston 2347, 2356, RX 37A, B; Roessner 2843.
RELIABLE	McAnally 3740-1; Burch RX 74, p. 4; McKinzey RX 74, p. 17; Kelly & Billings RX 74, p. 22; Cribbs RX 74, p. 31; Craig RX 74, p. 31; Statham RX 74, p. 32.
REPUBLIC	Houston RX 74, p. 8.
SOUTHERN	Embry 3480, 3484, 3491, 3493; Chiles 3594; Worsham 3607-9; Maughan RX 74, p. 18.
SOUTHLAND	McGahey 3684; Fannin RX 74, p. 1; Whitehurst RX 74, p. 1; Hancock RX 74, p. 1; Wells RX 74, p. 2; Oney RX 74, p. 2; Watson RX 74, p. 3; Talley RX 74, p. 3; White RX 74, p. 7; Stegall RX 74, p. 7; Hopkins RX 74, p. 9; Parker RX 74, p. 10; Davis RX 74, p. 11; McClure RX 74, p. 11; Barnett RX 74, p. 13; White RX 74, p. 14; Callon RX 74, p. 15; Bishop RX 74, p. 15; Bachman RX 74, p. 15; Machen RX 74, p. 16; Cooper RX 74, p. 17; Beck RX 74, p. 18; Chambers RX 74, p. 19; Fitzpatrick & Staggs RX 74, p. 19; Tolsdorf RX 74, p. 21; Maxon RX 74, p. 21; Longino RX 74, p. 22; Carlan & Johnson RX 74, p. 28; Hobbs RX 74, p. 28; Eastman RX 74, p. 28; Harris RX 74, p. 29; Gorman RX 74, p. 29; Woodson & Elam RX 74, p. 29; Peterman RX 74, p. 30; Hill RX 74, p. 31; Anderson RX 74, p. 31; Wells RX 74, p. 33; Purtle RX 74, p. 33; Roberson RX 74, p. 34; Taylor RX 74, p. 34.
STAAB	Midden 2384, RX 38D, E.
TEXAN	Vincent RX 74, p. 8; Adkins RX 74, p. 12; Dickerson RX 74, p. 29.
THOR	Copalupo 3186-7, 3194.
TIGER	Hackney RX 74, p. 29.

U. S.	Spradling 2930; Bates 2989-90; Toothman 3164-6; Ellington 3430; McNally 3739; Dickerson RX 74, p. 32.
VITALIC	Corbell RX 74, p. 8; Floyd RX 74, p. 23; Musick RX 74, p. 23.
X-SEL	McGahey RX 74, p. 3; Bables RX 74, p. 4; Oliver RX 74, p. 18; Norseworthy RX 74, p. 27; Byers RX 74, p. 34.
WATERLESS	Wolfe RX 74, p. 18; Hire RX 74, p. 35.
WILLARD	Midden 2389, RX 38D, E; Roessner 2843; Whiting 3143, 3147, 3151; Toothman 3164-5; Crawford 3310-11, 3316-7, RX 70B; De Ambra 3364-5, 3366-7, 3368, RX 73B-D; Heth 3624; McGahey 3674; Eubanks 3724-5, 3727; Swatsell RX 74, p. 2; Cornell RX 74, p. 5; Phillips & McDonald RX 74, p. 15; Miller RX 74, p. 15; Barnett RX 74, p. 17; Hendrix RX 74, p. 24; Hill RX 74, p. 28; Mathis RX 74, p. 31; Kitchens RX 74, p. 32; Swinney RX 74, p. 36; Stinson RX 74, p. 39.
WINTER KING	Rudd RX 74, p. 36.
WINTERS	Chiles 3594.

3. Brand of Tire

ARMSTRONG	Rittenhouse 2601-3; Holm 3057-61; Hummel 3092-4, 3096-8, Neufeld 3331.
CENTURY	Roessner 2842; McCue 3202.
COOPER	Rittenhouse 2601-3; Llewellyn 3235-6; Linton 3402-3, 3408.
DAYTON	Conner 3496-98, 3500.
DUNLOP	Allen 2618-19, 2622, RX 43A, B; Bolte 2654; McGuire 2799; Capolupo 3185-87; Sizemore 3213, 3224; Llewellyn 3234-5; Ellington 3430-32; Chiles 3593, 3595-96, 3603.
GATES	Vaughn RX 74, p. 36; Rogers 2958, 2960, RX 59; Mayers 2972-73; Retke 3007-8, RX

	60; Patterson 3025, 3028, RX 61; Tubbs 3043-44; Hendrickson 3121-22; 3135; Toothman 3164-68, 3173, RX 65A, B; Bailey 3256-58, 3261, RX 67; Moss 3454-55; Heth 3625.
GENERAL	Llewellyn 3236; Neufeld 3331; Worsham 3607-9, 3614, 3619; Moore 3646.
GILLETTE	Lawrence & Phillips RX 74, p. 35; Sizemore 3213, 3216-17, 3223, RX 66A-C.
GOODYEAR	Midden 2383; Smiley 2445; Bonacci 2505; Jacobson 2578-79; Swank 2633-34; Fox RX 74, p. 19; Roessner 2842-43; Mayers 2974, 2984; Retke 3009; Tubbs 3043-44, 3047, RX 62; Burnett 3071-72, 3074-76, RX 63A; Hendrickson 3121-22; Capolupo 3185-86; Sizemore 3213; Lane 3280, 3282, 3285, RX 69B; Mandel 3349, 3350-51, RX 72A; De Ambra 3365-66, 3368, RX 73B; Johnston 3389; Embry 3480; Chiles 3603; Heth 3625; Eubanks 3724-27; McAnally 3740-41, 3749; Helcamp 3754-55, 3761.
GREER	Chiles 3593, 3596.
HOOD	Moss 3450-53.
IMPERIAL	Bolte 2654.
INLAND	O'Brien 2488-89.
KELLY-SPRINGFIELD	Holm 3057-59; Hendrickson 3121-22.
LEE	Pryor 2942.
MANSFIELD	Pryor 2944.
MCCREERY	Whiting 3143.
MILLER	McGuire 2799.
MOHAWK	Whiting 3143-44, 3151, 3158; Capolupo 3185-86; Llewellyn 3234-35.
NATIONAL	Chiles 3593.
PENNSYLVANIA	Rittenhouse 2601-3; Roessner 2842; Conner 3496-97.

Proposed Findings of Fact and Conclusions Filed by Respondent, The Texas Company

REMINGTON	Holm 3068.
SEIBERLING	Eastman RX 74, p. 28; Whiting 3143-44, 3148-51, RX 64A-C; Leonard 3297-99.
U. S.	Livingston 2347, RX 37D; Midden 2383; Jacobson 2578; Nemec 2782, 2784, 2794; Spradling 2929, 2933-34, RX 57A, B; Mayers 2974, 2978, 2984; Bates 2989, 2998; Holm 3057; Capolupo 3185-86, 3194, 3198; McCue 3202; Sizemore 3213, 3224; Neufeld 3331; Johnston 3387; Embry 3480, 3483, 3492-93; McAnally 3738.
VANDERBILT	Burnett 3074.

Proposed Findings of Fact and Conclusions Filed by Respondent, The Texas Company

(662)

41.

The Texaco dealers in purchasing Goodrich or Firestone TBA products, to the extent that they do, are governed by the usual economic factors which, in a competitive society, determine a purchaser's decision to buy or not to buy. Such motivating factors are: customer's demand,[1] individual preference,[2] quality of product,[3] national advertising[4] and distribution,[5] the profit to be made from

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1. Midden 2391-2; Smiley 2420, 2421; Brooks 2463; O'Brien 2493, 2495-6, 2497; Bonacci 2505, 2508, 2509; Jacobson 2599; Rittenhouse 2601-2, 2603; Delle Grazie 2827; Roessner 2846, 2847, 2859; Spradling 2931; Mayers 2976; Bates 2993; Retke 3011, 3012; Patterson 3031, 3032; Tubbs 3044; Burnett 3073-4; Capolupo 3198; McCue 3201, 3202; Sizemore 3231, 3232; Crawford 3312, 3313; Neufeld 3332; Johnston 3390; Linton 3409, 3410, 3412, 3413; Barker 3422; Franklin 3437, 3438; Embry 3491; Worsham 3610; Heth 3630; McGahey 3673.

2. Midden 2391, 2392; Smiley 2420; Brooks 2459, 2462-3; Baird 2479; O'Brien 2493, 2495-6; Novak 2667; McGuire 2802, 2803; Delle Grazie 2819-2821; Mayers 2976; Bates 3002-3; Capolupo 3198; Crawford 3312, 3313; Neufeld 3331; Johnston 3386-8; Franklin 3438; Heth 3625, 3638; Moore 3644, 3645; McGahey 3671.

3. Midden 2392; Smiley 2420, 2422; Brooks 2664; O'Brien 2497; Delle Grazie 2821; Bates 2993; Retke 3011; Capolupo 3191; Lane 3286, 3296; Crawford 3312, 3313; Barker 3422; Franklin 3438; Embry 3494; Heth 3625, 3638; Jernigan 3663; McGahey 3673.

4. Smiley 2420, 2421; Brooks 2463; O'Brien 2497; Jacobson 2599; Roessner 2847; Mayers 2976; Retke 3012; Patterson 3031; Crawford 3312, 3313; Johnston 3390; Linton 3412, 3413; Barker 3421-2; Heth 3625, 3638.

5. Smiley 2420, 2422; O'Brien 2493; McGuire 2803; Mayers 2976; Lane 3296; Crawford 3312, 3313; Johnston 3390; Barker 3420; Franklin 3438; Heth 3625, 3638; Moore 3649-50; Jernigan 3663; McGahey 3673.

the handling of a particular line,[6] reciprocal purchasing arrangements,[7] obtaining of products on

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(671)

46.

On a national basis likewise, the evidence shows that sales of Goodrich and Firestone TBA under the sales commission contracts, have in no way foreclosed the Texaco service station market to competition.[1] Counsel supporting the complaint has directed his evidence almost exclusively at "leased stations", that is, service stations leased by their respective operators from The Texas Company. As to such leased stations, in 1955 (the last year before the complaint herein was filed) the sale of Goodrich or Fire-

6. Smiley 2420; O'Brien 2492, 2493, 2495; Jacobson 2599; Rittenhouse 2601, 2602, 2603; Roessner 2847; Mayers 2976; Bates 2992, 3003; Retke 3012; Burnett 3073; Capolupo 3191; McCue 3202; Hendrickson 3214-5; Sizemore 3227, 3228, 3231, 3232; Llewellyn 3235-36, 3243, 3244; Lane 3296; Neufeld 3332; Linton 3412, 3413; Barker 3421; Ellington 3429; Johnston 3388; Moore 3650; Jernigan 3659, 3663; McGahey 3673.

7. Novak 2667; Retke 3012.

1. The General Sales Manager of Purolator sent to Texas a list of 44 Texaco dealers who were winners in a Purolator sales program. Each winning dealer got a $25 War Bond for his "efforts in helping to sell more filters" (RX 101A, B). The winners were from 13 of the 15 sales divisions of Texas; 27 of the winners were lessee dealers (Halsell 4402). Purolator is a TBA product competing directly with the filters in the Goodrich and Firestone lines. Not only do Texaco dealers openly handle this line, competing for prizes offered by it, but the sales manager of Purolator called the attention of Texas to such dealers. Under these circumstances how can there be the slightest suggestion of market foreclosure or any misunderstanding by either dealers or competing suppliers as to the Texas TBA policy of independence.

stone TBA under the sales commission contracts amounted to $14.12 per 1,000 gallons of gasoline sold.[2] There is uncontradicted expert testimony, (a) that, based upon Department of Commerce and Census Bureau statistics, all service stations included in the census in 1955 averaged a TBA throughput of $38 per 1,000 gallons,[3] (b) that this average figure is an irreducible minimum for the total TBA of Texaco leased stations which in view of their exceptionally good facilities would have a higher figure of TBA per 1,000 gallons,[4] and (c) that the actual figure for the leased Texaco station could be somewhere in the neighborhood of $60 per 1,000 gallons of gasoline.[5] This expert testimony is supported by all of the evidence on this subject in the record. There is uncontradicted testimony that Texaco leased stations with TBA facilities have a TBA ratio between $50 and (672) $65 per 1,000 gallons of gasoline.[6] Counsel supporting the complaint offered in evidence certain throughput reports covering service stations leased from The Texas Company for the Lincoln and Omaha areas and these reflect a TBA ratio for 1956 averaging approximately $59 per 1,000 gallons for Omaha and $71 per 1,000 gallons for Lincoln.[7] In addition, twenty-two dealers testified either on direct or cross examination to their average monthly gasoline gallonage and also their

2. CX120, CX121, CX211 (barrels of gasoline multiplied by 42 to give gallons) see RX84D for computation.

3. Beckman 4234, 4341, 4343, RX86M.

4. Beckman 4348-49.

5. Beckman 4350.

6. Killips 3912; Underhill 3957.

7. CX209 A to Z(10). The averages are computed by simply adding all of the gasoline gallonage figures, dividing by 1,000, and adding all of the TBA throughput figures, and dividing the dollars by the gallonage.

TBA throughput. Averaging all of the statistics thus obtained, it appears that these twenty-two dealers' TBA throughput was $63 per 1,000 gallons of gasoline.[8]

8. The foregoing figure is computed by reference to the following testimony:

Name	*Transcript No.*	*Gallonage per month*	*TBA*
Livingston	2346	30,000	
	2367		$ 800/$ 1,000 per month
Smiley	2408	25,000	
	2439		$35,000 p. a.
Baird	2472	18,000	
	2484		$ 1,500 per month
Bonacci	2502	12/14,000	
	2515		$ 9,000 p. a.
Swank	2631	45,000	
	2637		$ 1,500 per month
Mayers	2970	15,000	
	2984		$ 1,000 per month
Bates	2986	25,000	
	2997–8		BFG $ 1,308 per month
			U. S. Royal
			$ 300/$ 400 per month
Patterson	3023	50,000	
	3038		$ 2,200/$ 2,300 per month
Burnett	3070	29,000	
	3084		$11,000/$12,000 p. a.
Hendrickson	3120	22,000	
	3124		$ 800 per month
Whiting	3142	6,000	
	3150		$ 2,000 per month
(673)			
Toothman	3164	8,000	
	3182		$ 400/$ 600 per month
Capolupo	3183–4	18,000	
	3196		$ 400/$ 600 per month
McCue	3200	24,000	
	3200		$ 3,500 per month

Proposed Findings of Fact and Conclusions Filed by Respondent, The Texas Company

Name	*Transcript No.*	*Gallonage per month*	*TBA*
Llewellyn	3234	20/25,000	
	3249		fluctuated from $ 600/$ 2,000 per month
Lane	3279	40,000	
	3293		$ 2,500 per month
Crawford	3308	18,000	
	3309		$ 600/$ 800 per month
Neufeld	3326	33,000	
	3332–3		$ 600/$ 700 per month
DeAmbra	3362	45/50,000	
	3372		$ 2,100/$ 2,200 per month
Johnston	3388	30,000	
	3390		$ 3,000 per month
Heth	3621	25,000	
	3633–4		$ 1,200/$ 1,800 per month
Helcamp	3755	25/30,000	
	3755		$40,000 p. a.
Total		571,500	$35,991

[Helcamp gave the dollar amount of his TBA from Goodyear only although he testified he bought from other sources as well, 3755.]

In determining the totals we have taken the average where a range is given for the gallonage or TBA of any particular dealer.

The foregoing computation is arrived at by averaging the gallonage per month and the TBA in each instance where a range of gallons or TBA dollars was stated in the testimony. In addition, where the TBA figure was given in terms of sales per year, that figure was divided by 12 in order to arrive at monthly TBA sales comparable to the gallonage per month.

As most of the foregoing testimony was brought out on cross-examination, it is not entirely clear whether the sales were in terms of selling price or cost. The record shows, however, that the dealers thought of sales in terms of cost and not selling price. See, for example, Helcamp 3755. Even giving these figures a construction most unfavorable to respondent and reducing the witnesses' TBA "sales" figures by a reasonable amount of markup, the TBA purchases would be greatly in excess of the $14.12 per thousand gallons average of sponsored sales by lessee dealers and would come closer to the $60 per thousand average than to any other figure in the record.

Proposed Findings of Fact and Conclusions Filed by Respondent, The Texas Company

(674)

47.

Although the TBA sales commission contracts here under attack have been in effect since 1940, by 1955, the last year prior to filing the complaint in January 1956, sales under those contracts to the leased stations of The Texas Company constituted only a small percentage of the total TBA throughput of such service stations and did not foreclose competitors or show any tendency toward such foreclosure.[1]

(675)

48.

Counsel supporting the complaint has placed in evidence as Commission's Exhibits 116, 117, 118, and 119, tables showing the total number of dealers who purchased as much as a dollar's worth of tires, tubes, batteries and accessories under the sales commission contracts from Goodrich or Firestone during any one month in 1955 and during any three-month period for 1952, 1953, and 1954. As some Texaco dealers purchased both Goodrich and Firestone TBA, an addition of the total number of dealers shown on these exhibits represents some duplication and thus increases the number of Texaco dealers purchasing under the sales commission contract above the actual number of such dealers. Consequently, the totals shown as purchasing under the sales commission contracts is presented in the following tables in a light most favorable to the complainant. While the figures represent only the number of dealers purchasing any TBA under the sales commission contracts during any three-month period for 1952, 1953, and

1. Citations and computations in preceding finding.

1954, and any one-month period during 1955, it is a fair inference that the numbers thus stated represent substantially all dealers making such purchases for it is unlikely that a customer of any substance under the sales commission contracts would let a month or a three-month period go by without purchasing at least one dollar's worth under such contract. This conclusion is verified by the fact that when the method of bookkeeping was changed in 1955 from a three-month to a one-month accounting period, there was no decrease in the number of dealers recorded as purchasing. This would indicate that all regular customers under the sales commission contracts purchase at least some TBA under those contracts each month. On this basis the statistics show the following with respect to purchases made under the sales commission contracts (CX 116, 117, 118, 119):

Proposed Findings of Fact and Conclusions Filed by Respondent, The Texas Company

(676)

(a) tires and tubes:

	1952	1953	1954	1955
Total number of dealers	39,045	37,385	38,014	38,420
Number of dealers purchasing Goodrich tires and tubes	2,555	3,003	3,111	3,669
Number of dealers purchasing Firestone tire and tubes	6,298	6,335	6,567	6,518
Total[1]	8,853	9,337	9,878	10,187
Percent of dealers purchasing Goodrich and/or Firestone	23%	25%	26%	27%

(b) batteries and accessories:

				1955	
	1952	1953	1954	B[2]	A[2]
Total number of dealers	39,045	37,385	38,014		
Number of dealers purchasing Goodrich batteries and accessories	1,880	2,304	2,559	2,155	2,349
Number of dealers purchasing Firestone batteries and accessories	4,850	5,045	5,031	2,611	3,920
Total[1]	6,730	7,349	7,590	4,766	6,269
Percent of dealers purchasing Goodrich and/or Firestone	17%	20%	20%	13%	16%

1. The statistics set out in these tables are further weighted in favor of Complainant because we have selected the highest number reported as purchasing sponsored TBA products for any one month or three months in each of the years shown.

2. During 1955 for the first time there was a separate breakout of dealers purchasing batteries and dealers purchasing accessories. For that reason the 1955 statistics are listed in 2 columns.

Proposed Findings of Fact and Conclusions Filed by Respondent, The Texas Company

The foregoing figures demonstrate that more than 70% of Texaco dealers do not regularly purchase any Goodrich or Firestone tires and (677) tubes under the sales commission contracts and more than 80% do not regularly purchase Goodrich or Firestone batteries or accessories. Perhaps, if all sporadic purchases of Goodrich and Firestone are considered, the percentage of Texaco dealers who do not purchase any Goodrich or Firestone TBA may be somewhat smaller than the percentages just referred to. But it is certain that complainant's statistical evidence supports rather than challenges respondent's showing that a very large portion of the TBA in Texaco stations does not come from Goodrich or Firestone and that the sales commission contracts have created no foreclosure and no semblance of a foreclosure of the Texaco service station market.

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Proposed Findings of Fact, Conclusions of Law, and Order—Counsel Supporting the Complaint

(April 1, 1959)

(913)

VI

Conclusions of Fact

189. The evidence of record, as shown above, supports the following general conclusions of fact:

1. Texaco is engaged in interstate commerce in connection with its promotion of the sale of Goodrich and Firestone TBA products;

2. Texaco, by virtue of the relationship, contractual or otherwise, existing between it and station operators, consignees and distributors, handling its petroleum products, exercises control or influence over such outlets, thereby depriving them of freedom of choice as to their source of supply of TBA products and causing them to buy the TBA products of the respective rubber companies;

3. Competing manufacturers, and/or distributors, wholesalers or other vendors of TBA products are foreclosed from a substantial portion of the TBA business of the Texaco petroleum outlet market as a result of the override agreements between Texaco and the rubber companies;

4. The sales commission plan of selling and promoting the sale of TBA products, between respondents or between a respondent and others not parties herein, and the acts and practices engaged in thereunder, have a tendency to lessen, restrain, prevent or eliminate competition in the sale of said products, and thereby constitute an unfair method of competition and unfair acts and practices, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

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Initial Decision

(October 23, 1959)

(1181)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

DOCKET No. 6485

[SAME TITLE]

By Earl J. Kolb, Hearing Examiner.

Peter J. Dias and James S. Kelaher, for the Commission.

White & Case, New York, New York, by Edgar E. Barton, for respondent The B. F. Goodrich Company;

Marion J. Epley, Jr., New York, New York, and Royall, Koegel, Harris & Caskey, New York, New York, by Kenneth C. Royall and Frederick W. P. Lorenzen, for respondent The Texas Company.

This proceeding is based upon a complaint brought under Section 5 of the Federal Trade Commission Act, charging as unlawful certain contracts entered into by the respondents, The B. F. Goodrich Company and The Texas Company, whereby The B. F. Goodrich Company agreed to pay The Texas Company a sales commission on all tires, batteries and accessories sold by said The B. F. Goodrich Company to service stations and other outlets of The Texas Company. The complaint further charged that respondent, The B. F. Goodrich Company, had entered into (1182) similar contracts with certain oil com-

panies other than The Texas Company, and that The Texas Company had entered into a similar contract with The Firestone Tire & Rubber Company.

This proceeding is now before the hearing examiner for final consideration upon the complaint, answers thereto, testimony and other evidence, proposed findings of fact and conclusions filed by all parties, and briefs in support thereof, and reply briefs. The hearing examiner has given consideration to the proposed findings of fact and conclusions submitted by the parties and their briefs in support thereof, and all findings of fact and conclusions of law proposed by the parties respectively, not hereinafter specifically found or concluded, are herewith rejected, and the hearing examiner having considered the record herein, and being now duly advised in the premises, makes the following findings as to the facts, conclusions drawn therefrom and order:

1. Respondent, The B. F. Goodrich Company (hereinafter sometimes referred to as "Goodrich"), is a corporation organized, existing and doing business under the laws of the State of New York with its principal office and place of business located at 500 Main Street, Akron, Ohio. Said respondent, among other things, is engaged in the sale and distribution in interstate commerce of tires, batteries, accessories and supplies (hereinafter referred to as "TBA").

2. Respondent, The Texas Company (hereinafter sometimes referred to as "Texas" or "Texaco"), is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and place of business located at 135 East 42nd Street, New York 17, New York. Said respondent is engaged in the production and in the sale and distribution in interstate commerce of petroleum products, including gasoline and lubricants sold to petroleum wholesalers and service stations.

3. There are a large number of service stations and distributors which sell principally the petroleum products of The Texas Company. These service stations which purchase Texaco products for resale at retail to the consuming public are classified as "C" stations and "D" stations. A "C" station is one that is either owned or leased by The Texas Company, and in turn leased by it to the dealer. A "D" station, which is sometimes called a (1183) contract station, is either owned by the operator or leased by him from someone other than The Texas Company.

4. Sales to service stations are made by The Texas Company either direct with delivery from company-operated bulk plants or through consignees, who are designated as "B" accounts. A consignee is one who operates a bulk plant owned by The Texas Company or, in some instances, by the consignee. The Texas Company stocks the plant with its petroleum products, and the consignee delivers the products and is compensated by commissions. He is a wholesaler performing the same function that a Texas salary-operated plant would perform. The Texas Company also sells its petroleum products to distributors designated as "E" accounts, who operate bulk storage plants, purchase Texaco products, and sell such products to service station dealers and consumers.

5. The number of Texaco accounts in the various classifications during the past few years were as follows:

(a) Texaco Lease ("C") stations—

1951—11,570
1952—11,858
1953—12,070
1954—12,674
1955—13,366
1956—13,764 (as of June 1956)

(b) Texaco contract ("D") stations—
1952—17,708
1953—16,913
1954—16,853
1955—16,806
1956—(June) Not available.

(c) Texaco consignee ("B") accounts—
1951—1,225
1952—1,172
1953—1,128
1954—1,124
1955—1,150
1956—(June) Not available.

(1184)

(d) Texaco distributors ("E") accounts—
1951—687
1952—664
1953—652
1954—697
1955—711
1956—(June) Not available.

6. The usual form of lease entered into by the respondent Texas with its lessee dealers or "C" stations was for a term of one year, and thereafter from year to year, subject to termination by either party at the end of the first or any subsequent year on ten days' prior written notice. Rental provided by the lease was usually a flat rental, plus a cents-per-gallon charge, dependent upon the location of the station, financial condition of the lessee and potential income. Such lease contained so-called "housekeeping" provisions relating to the use, maintenance and

general appearance of the station. Breach of any of the terms, conditions or covenants of the lease by the lessee constituted grounds for immediate termination by The Texas Company without notice to the lessee.

7. In addition to the lease, The Texas Company entered into an "Agreement of Sale" with its dealers. These agreements provided for the purchase of an annual minimum and maximum quantity of Texaco gasoline, oils and greases at the current posted price at the time delivery was made. These agreements were usually for a period of one year, and from year to year thereafter, and could be terminated at the end of the initial term, or any anniversary thereof, by giving thirty days' written notice, with automatic termination upon termination of lease of property. These agreements also provided for a quantity discount or rebate, payable at the end of the year.

8. Tires, batteries and accessories have become a necessary and integral part of the business operation of the Texaco dealer. He cannot progress in his business unless he has the revenue from that portion of his business and also be in a position to serve his customers completely. It is to the interest of The Texas Company to have its dealers engaged in the sale of TBA as this builds a stronger dealer organization and increases the sale of gasoline.

(1185) 9. On March 1, 1940, The Texas Company entered into a sales commission agreement with The B. F. Goodrich Company which provided for the payment of commissions to Texas on the sales by Goodrich of its tires, tubes, batteries and auto and home supplies to Texaco outlets, including service stations, distributors and consignees, in consideration of the services to be rendered by

the Texas sales organization in promoting the sale of these products. This agreement was modified from time to time and was later superceded by contract dated November 23, 1943, which provided, among other things, for the payment of a commission of 10 percent on sales to "C" and "D" stations, and 7½ percent on sales to "B" and "E" stations by Goodrich. The Texas Company also entered into a similar sales commission agreement with The Firestone Tire & Rubber Company.

10. The services which were performed by The Texas Company pursuant to its contract with Goodrich and Firestone in promoting the sale of TBA products consisted principally of the following:

(a) Texas personnel, when interviewing prospective dealers for new or established service stations, advised them of the importance of TBA and recommended the TBA products of Goodrich and Firestone, and when dealer was selected would at times notify Goodrich or Firestone of such selection and introduce the new dealer to sales representatives of Goodrich or Firestone and assist the new dealer in setting up an adequate TBA inventory.

(b) Texas salesmen were encouraged by Texas management to write up orders for sponsored TBA without waiting for a formal request from a dealer.

(c) Texas frequently conducted dealer meetings and provided training courses for dealers, both of which included suggestions for the displaying and merchandising of TBA, in some instances with the active participation of Goodrich and Firestone.

(d) Texas incorporated suggestions on merchandising TBA in its dealer magazines and arranged for advertising and promotions, which included TBA products of Goodrich and Firestone, and participated in promotions instituted by Goodrich and Firestone.

(e) Texas made TBA products available to credit card holders, including merchandise sold on deferred payments without carrying charge.

(1186) 11. Both Goodrich and Firestone have sold substantial quantities of their TBA products to Texaco outlets. Sales by both Goodrich and Firestone during the years 1952 to 1956 to the various classes of accounts were as follows:

CLASSES OF ACCOUNTS

Year	Rubber Co.	"C"	"D"	"E"	"B"	Total
1952	G	$ 5,803,896	$ 1,911,638	$ 1,605,665	$ 3,425,084	$ 12,746,283
	F	13,838,565	6,210,771	3,030,989	6,509,406	29,589,731
1953	G	6,832,705	1,807,688	1,804,391	3,480,551	13,925,335
	F	15,843,023	5,634,766	3,210,938	6,310,907	30,999,634
1954	G	7,698,833	1,826,738	1,726,499	3,571,274	14,823,344
	F	16,441,762	5,326,669	3,070,478	5,905,508	30,744,417
1955	G	9,444,122	2,151,778	2,003,965	4,334,376	17,934,244
	F	19,464,784	6,036,009	3,731,307	6,330,072	35,562,172
1956	G	10,515,043	2,159,457	1,947,333	4,310,815	18,932,648
	F	23,547,120	6,569,198	3,386,318	6,376,622	39,879,258
TOTALS:		$129,429,853	$39,634,712	$25,517,883	$50,554,615	$245,137,066

(1188) 12. Based upon the foregoing sales, Goodrich and Firestone paid Texas the following annual sales commissions:

Year	*Rubber Company*	*Commission*
1952	G	$ 1,090,583
	F	2,557,991
1953	G	1,215,084
	F	2,704,976
1954	G	1,310,738
	F	2,678,005
1955	G	1,597,800
	F	3,197,654
1956	G	1,736,811
	F	3,743,852
Total:		$21,833,494

13. It is the contention of counsel supporting the complaint that because of the relationship, contractual and otherwise, between Texas and its station operators, consignees and distributors, the adoption of the Sales Commission Plan of selling and promoting the sale of TBA entered into by Texas with Goodrich and Firestone has a tendency to lessen, restrain, prevent or eliminate competition in the sale of TBA, and has foreclosed other suppliers of TBA from a substantial portion of the TBA business of the Texaco petroleum outlets.

14. In support of the charges of the complaint, eight former Texaco dealers were called to testify in this proceeding. Five of these dealers testified to pressure being placed upon them relative to the purchase and display of

non-sponsored TBA, and two claimed that TBA was involved in the cancellation of their leases. Except for these two dealers, three of the dealers voluntarily left their station, and the leases of the remaining three were cancelled for reasons not involving the sale of TBA. The testimony relative to pressure and cancellation is summarized as follows:

(a) James S. Zaloudek, a Texas lessee from 1948 to 1954, testified on direct examination that he expected his lease to be cancelled for handling non-sponsored TBA. On cross-examination he admitted that (1189) cancellation might have resulted from difficulties arising from the sale of tires to a customer on credit card without mounting the tires, as required. He eventually had to make good on this sale as the customer resold the tires and defaulted in making payment. This witness further testified to controversies and arguments with Texas representatives relative to the carrying and display of non-sponsored TBA items. He testified that he had been told to get rid of a certain non-sponsored anti-freeze; that he had been required to take certain non-sponsored filters off display and put them in the back room; that he had been told to remove Armstrong tires from the display rack and certain accessories from the shelves, which he refused to do; and that he was forced by Texas representatives to take out some Auto-Lite batteries he had purchased. With reference to the items of TBA which he continued to purchase, he was told by Texas representatives that he should not have them in his station, and finally in 1953 he dealt exclusively with Firestone with the exception of some non-sponsored waxes, polishes and filters; and in 1954 carried 92 percent Firestone and Texaco, the other 8 percent consisting of chains, anti-freeze, filters, oil, polishes and waxes. The Texas salesman denied that he told Zaloudek that he could not handle, and should remove, the various TBA items.

(b) C. F. Sanford, Jr., a Texas lessee from 1953 to 1955, who purchased gasoline from an independent consignee of The Texas Company, testified that shortly after taking over the station he put in a stock of Continental batteries and was informed by a Texas representative that he would either handle Firestone or expect not to renew his lease; that he continued to handle these batteries and was subsequently notified of the cancellation of his lease. It further appears from the testimony in this proceeding that Sanford's operation of the station was generally poor; that he was in financial difficulties and gave bad checks to the consignee for the payment of gasoline. It also appears from the record that due to a highway change about 30 or 40 percent of the business of the station would be lost, and that because of Sanford's financial condition the Texas representative was of the opinion that Sanford would not be able to survive, and that this was the primary factor in recommending the cancellation of the lease and that TBA was not involved.

(c) Harvey G. Talley, a Texas lessee from 1938 to 1951, testified that in 1945 the Texas representative asked him not to display Dayton tires but to place (1190) them in the back room. He later disposed of the Dayton tires and carried only Firestone until the end of his lease. He displayed Southern batteries and a few Willard batteries, but no objection was made to these batteries. Lease was cancelled because he could not stay open twenty-four hours a day, which was required at that particular location.

(d) Richard E. Tidwell, a Texas lessee from October 1953 to March 1955, testified that he consulted with a Texas salesman about handling a cheaper tire, but was told that the company would be more lenient and would look with favor upon dealers who were loyal. He did not take on the cheaper tire on a stocking basis, and when he found

out that Texas Company desired him to carry only one line he endeavored to work along with them. He did carry a cheaper battery, but did not display it. Tidwell voluntarily gave up the station because of a desire to go back into flying.

(e) John D. Scott, a Texas lessee three years, bought only Goodrich TBA, except odds and ends from competitors. Carried Goodrich tires only and Goodrich recapping until about a year before testifying, when he changed recapping to another concern, owned by a friend of his, without any objection from Texas. He also carried Goodrich batteries, only, until about eight months prior to hearing, when he put in a line of cheaper batteries, but did not display them. Lease was concelled for reasons other than TBA, including controversies over the clock and coca cola machine and excessive drinking on the premises.

(f) Herntan Gilbert, Earl M. Gause and H. Arpin Koehler carried Goodrich or Firestone exclusively except for some minor items purchased to meet competition. Their leases were cancelled for reasons not involving TBA.

15. Certain representatives of suppliers of TBA, who were selling in competition with respondent Goodrich, were called as witnesses in this proceeding. These parties testified generally that they had difficulty in selling TBA to Texaco stations and testified specifically as to reasons given by certain Texaco dealers for not buying or selling their TBA items. This testimony as to reasons given by Texaco dealers for not purchasing competitive TBA was allowed under the authority of *Lawlor* vs. *Loewe*, 235 U. S. 522. This latter testimony was received not as proof of the truth of the facts recited, but for the purpose of showing the state of mind of the dealer. This testimony, however, is competent to show that dealers did (1191) not

purchase a substantial amount of competitive non-sponsored TBA because of their feeling that they were required to purchase Goodrich or Firestone TBA.

16. In the course of its defense to this proceeding, The Texas Company introduced the testimony of 54 Texaco dealers and 5 ex-Texaco dealers who came from thirteen of the fifteen sales divisions of Texas in the United States. With the exception of 1 ex-dealer witness, who had handled Firestone prior to becoming a Texas dealer and who was completely sold on the Firestone line, all of these witnesses testified to displaying and selling non-sponsored TBA without objection or complaint by Texas.

17. The hearing examiner recognizes that present dealers appearing to testify were under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases. The record, as a whole, shows that there were no exclusive dealers in the sense that they confined themselves entirely to sponsored TBA, as all dealers carry some non-sponsored TBA to satisfy demands of their customers either in varying amounts or on a pick-up basis. Many of the stations do not have the space or finances to stock a complete line of tires and batteries, but instead purchase non-sponsored as well as sponsored items on a pick-up basis to satisfy customer demand. In some instances there was some confusion as to the definition of accessories among the dealers, as some included as accessories items generally known as repair parts, as distinguished from accessories, and some dealers testified to carrying non-sponsored items which were, in fact, not supplied by Firestone or Goodrich. Many of the dealers called maintained a high sales volume in gasoline gallonage, and also oil, and Texas would not jeopardize this gallonage by pressure tactics sufficient to irritate or alienate such deal-

ers. This is also true as to those dealers in outlying locations where station operators are not readily available, but where it is important to Texas to maintain service.

18. As a result of an antitrust suit filed against Standard Oil Company of California, Walter Hochuli, General Sales Manager of The Texas Company, on June 1, 1948, issued a so-called policy letter to the territorial managers, which was subsequently disseminated down the chain of command to salesmen. This letter advised the personnel that they were to consider a Texaco dealer as an independent businessman; that he should be encouraged to expand his business by purchasing TBA; that the personnel have a (1192) right to recommend certain lines, but that Texas has neither the right nor the desire to dictate to the dealer or influence him in any way as to the type of merchandise he should handle, or the source from which he should purchase it; that the Texaco dealer must be permitted to operate as an independent businessman and anyone who violates this policy would be subject to immediate dismissal.

19. The Texas policy was restated to its personnel in 1952 and 1953, and in 1955 it was incorporated in the portfolios of each salesman so that the salesman would have the statement of policy for ready reference, although by this time it did not carry with it the threat of immediate dismissal. This policy was not transmitted to the Texas dealers except on occasion, and then orally, by salesmen or other personnel, and it was only after the dealer sold a sufficient amount of lubricating oil to warrant the payment of a discount or rebate that he was informed by letter that he was free to select any brand of TBA merchandise which he might elect and that the only interest Texas had was to help him market that merchandise at a profit so that his business would be more successful in every way.

20. The dealer witnesses called by Texas all testified that they were familiar with, and knew, the Texas policy with reference to the sale of TBA and considered themselves independent businessmen, free to purchase TBA as they might see fit. Many testified that when they were interviewed as prospective dealers they were told that they could purchase TBA wherever they might wish. The ex-dealers called in support of the charges of the complaint testified that when they were interviewed as prospective dealers they were told that they could purchase either Goodrich or Firestone with no indication that they might purchase from other suppliers. It would be unusual to expect that Texas salesmen would vigorously insist to a dealer that he had a right to buy wherever he might wish when the salesman's compensation was based, in part, upon commission on sales of sponsored TBA.

21. After giving consideration to the testimony of the various witnesses appearing in this proceeding and giving consideration to their demeanor and credibility, it is the opinion of the hearing examiner that the record in this proceeding as a whole indicates that coercion and pressure was, in fact, brought on a substantial number of dealers to induce them to purchase sponsored TBA and to discontinue the purchase or display of non-sponsored items.

(1193) 22. The use of credit cards in connection with the sale of Goodrich TBA was instituted by The Texas Company in March 1940. This was discontinued as of May 6, 1942, due to credit regulations issued by the Federal Reserve Board. The use of credit cards was again resumed on January 1, 1948. From that date until January 1, 1955, there were no restrictions with regard to brands of TBA that might be purchased on credit, but commencing January 1, 1955, Texas specifically restricted the use of

its credit card in connection with TBA purchases to Goodrich and Firestone products. It was on this date that Texas instituted the practices of selling TBA products on credit cards on a deferred payment basis, allowing three months for payment of purchases of $30.00 or more, and six months for purchases of $50.00 or more, with no service or carrying charge being made. The record shows that Texas dealers have from time to time continued to charge non-sponsored TBA items on the regular monthly settlement basis. It is logical for Texas to limit sales of TBA on deferred payment, without interest or carrying charge, to those products on which Texas receives a commission, as this would, in part; indemnify it for the expense in connection with the deferred payment plan.

CONCLUSIONS

1. The complaint does not charge, nor does the evidence introduced in this proceeding prove, the existence of a conspiracy between Goodrich and Texas to restrict and restrain competition in the sale and distribution of TBA products.

2. There is no evidence that The B. F. Goodrich Company engaged in, or participated in, any acts or practices designed to force dealers and distributors of The Texas Company to purchase Goodrich TBA products.

3. Neither the sales commission contract between Texas and Goodrich, nor the contracts between Texas and its dealers and distributors, contain any clause or provision requiring such dealers or distributors to purchase only Goodrich TBA.

4. In making a determination as to whether the leases made by Texas with its dealers are used to suppress com-

petition, the extent to which they are in conformity (1194) with reasonable requirements in the field of commerce in which they are used will have a direct bearing on their legality. The housekeeping provisions of the leases are not unreasonable or oppressive. The renewal and cancellation provisions of the lease are in conformity with those which ordinarily appear in many leases of property.

5. The consideration for the payment of a commission to Texas under the sales commission contract is based upon substantial services rendered by Texas in promoting the sale of Goodrich TBA to Texaco dealers and distributors.

6. No inference or implication can be drawn, simply from the contractial relationship between Texas and its dealers, that the degree of control by Texas over its dealers is sufficient to force its dealers to purchase only sponsored TBA.

7. It is further concluded that for the purpose of inducing the purchase of sponsored TBA by Texaco dealers, Texas representatives have, in fact, attempted to, and did, coerce and force Texaco dealers to purchase substantial quantities of Goodrich and Firestone TBA, and the respondent, The Texas Company, accepted the benefits of such acts and practices. These acts of coercion consisted of demands that dealers discontinue the purchase or display of non-sponsored TBA under threat of lease cancellation or other corrective action. Such coercion need not be 100 percent effective in order to constitute an unfair method of competition or an unfair act or practice in violation of the Federal Trade Commission Act.

8. The charges of the complaint are sufficiently broad to sustain an order prohibiting overt acts of coercion even

though it be found that the contracts entered into between the parties are not illegal.

9. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein.

10. The acts and practices of The Texas Company, as herein found, which involve coercion of its dealers, are all to the prejudice of the public and have a tendency and capacity to restrict, restrain or lessen competition in the sale of TBA products, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.
(1195)

ORDER

It is Ordered that respondent, The Texas Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the promotion, offering for sale, sale and distribution of tires, inner tubes, batteries and other automotive parts, accessories and supplies (hereinafter referred to as "TBA products"), in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Inducing, or attempting to induce, the purchase of TBA products of a particular supplier by Texaco dealers by threatening to cancel or to not renew lease of dealer or to take other retaliatory action if said products are not purchased.

2. Threatening the cancellation or non-renewal of any contract or lease if the dealer purchases or con-

tinues to purchase TBA products not sponsored, recommended or approved by the respondent, or the sale of which is not promoted by the respondent.

3. Threatening the cancellation or non-renewal of any contract or lease if the dealer (1196) displays or continues to display TBA products not sponsored, recommended or approved by the respondent, or the sale of which is not promoted by the respondent.

4. The performance of any acts of intimidation or coercion, either through statements, oral or written, made directly to dealers or by representatives of respondents, which are designed to, or have, the purpose or effect of intimidating or coercing respondent's dealers or other customers to purchase TBA products sold by any designated supplier sponsored, recommended or approved by respondent.

5. Compelling, or attempting to compel, dealers by any means or method to sell and distribute only products supplied by a designated supplier sponsored, recommended or approved by respondent.

6. Preventing, or attempting to prevent, its dealers by means of threats, intimidation or coercion, from handling or displaying TBA or other similar products which the respondent does not sponsor, recommend or approve, or the sale of which is not promoted by the respondent.

(1197) It is Further Ordered that the complaint be, and it is hereby, dismissed as to respondent The B. F. Goodrich Company.

Earl J. Kolb,
Hearing Examiner.

October 23, 1959.

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Appeal Brief of Counsel Supporting the Complaint
(Page 23)

(February 12, 1960)

(1234)

* * *

"Finally the witness agreed that they referred 'to that policy of independence.' (Tr. 3128)

"The same witness was again asked about the oil discount letter on cross-examination with the following results:

Q. Do you recall the exact language in this bonus letter you say you received on oil?

A. Not the exact language, but it brings out the point that the amount of money you can make by selling more oil.

Q. Is that about the extent of it?

A. Well, it brings out the facts about you being a Texaco dealer and the advantages of it.

Q. And is that about the extent of it?

A. As far as I know. (Hendrickson—Tr. 3138)

"As has been previously demonstrated, dealers are not shown Texaco's policy letters and in view of the foregoing it must also be found that dealers, as a whole, are not specifically informed in any other way that they have freedom of choice in selecting TBA. (PF 89 (CSC) 41-2)."

The examiner's summary of the testimony of ex-dealers used in support of the complaint together with his conclusion regarding coercion leads to the assumption that only that part of the testimony was given weight which involved TBA. (ID 8-10, par. 14a-f and p. 14, par. 7) Thus the examiner failed to draw necessary and proper inferences from their testimony which demonstrated control, stemming from contractual relationship existing between the dealer and Texaco.[12] For example, he makes no

12. For proper summary and significance of ex-dealer testimony see Appendix "F."

mention of the obvious inherent control relied upon by Texaco, to enable it to seek reimbursement for goods sold on cancelled credit cards, when Texaco was negligent in its failure to notify dealers of such cancellation.[13]

The examiner associates no control with the insistence, by Texaco, that dealers maintain the hours of operation which Texaco determined, despite the fact that such hours were not shown to be justified in studies made by the dealers.[14] Although he found that dealers felt they were *required* to purchase sponsored TBA and despite the fact that he found that respondent's dealer witnesses were "under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases" the examiner still failed to make a finding regarding the inherent control which unquestionably formed the basis of his findings. (ID 10-11, pars. 15; 17)

The examiner's failure to make a specific finding as to control and influence and failure to recognize that latent control and influence formed the basis for some of his findings has inevitably led to his improper conclusions that—

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13. Zaloudek, ID 8-9; see A4 *supra* and Appendix "F," pp. 45-50; see also testimony by respondent witness Bailey—Tr. 3271-3 and PF(CSC) 52 No. 121 (Appendix "E").

14. Talley; Gilbert and Koehler—See Appendix "F," par. 41(a); (e) and (f) pp. 50; 55-6.

• • •

Order Remanding Proceeding to Hearing Examiner

(March 9, 1961)

(1730)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Earl W. Kintner, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern

[SAME TITLE]

Counsel supporting the complaint and respondent, The Texas Company, having filed cross-appeals from the hearing examiner's initial decision; and

The Commission having determined that the record as presently constituted does not provide an adequate basis for an informed determination of the competitive effects of the sales commission method of distributing tires, batteries and accessories employed by the respondents, and being of the opinion that the record should be supplemented in this respect to the end that all of the issues involved in the case may be finally and conclusively disposed of on their merits:

IT IS ORDERED that this proceeding be, and it hereby is, remanded to the hearing examiner for the reception of such further evidence concerning the competitive effects of the respondents' practices as may be offered in conformity with the views expressed in the accompanying opinion of the Commission.

IT IS FURTHER ORDERED that after the receipt of such additional evidence the hearing examiner indicate any changes he may wish to make in his initial decision in the light thereof.

By the Commission.

ROBERT M. PARRISH,
Secretary.

Issued: March 9, 1961

Opinion of the Commission

(March 9, 1961)

(1731)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Earl W. Kintner, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern

[SAME TITLE]

By Kintner, Chairman:

This proceeding commenced with the issuance of a complaint on January 11, 1956, charging The B. F. Goodrich Company and The Texas Company with acts, practices and agreements constituting a violation of Section 5 of the Federal Trade Commission Act. 15 U. S. C. §45 (1958). Respondents answered in due course, admitting in part the allegations of the complaint but denying that Section 5 has been contravened.

The principal issue framed by the pleadings is the legality of a contract between these respondents calling for the payment by Goodrich of a sales commission to The Texas Company (hereinafter referred to as Texaco) in return for sales assistance in promoting automotive tires, batteries and accessories (hereinafter referred to as "TBA" or "TBA products") of Goodrich to retail and wholesale petroleum outlets of Texaco. In addition, Texaco is charged with having entered into a substantially identical agreement with The Firestone Tire & Rubber Company, and

Goodrich is charged with having entered into such agreements with five (1732) other oil companies in addition to Texaco.[1] Although Goodrich and Texaco are the only respondents in this proceeding, Firestone and Shell Oil Company are joined as respondents in a companion case, Docket 6487, and in another companion case, Docket 6486, The Goodyear Tire & Rubber Company and The Atlantic Refining Company are paired as respondents.

The complaint charges, in substance, that the success enjoyed by Goodrich and Firestone in selling to Texaco outlets has been purchased at the expense of competing TBA suppliers at the manufacturing and wholesale levels. Counsel supporting the complaint allege that the Texaco-Goodrich and Texaco-Firestone sales commission contracts are unlawful because, *in conjunction with Texaco's economic power over its ostensibly independent wholesale and retail petroleum outlets,* these contracts operate to stifle the free choice of Texaco's retail and wholesale dealers insofar as their TBA purchases are concerned. Among the unlawful competitive effects stemming from Texaco's sales commission contracts charged by the complaint are these: 1) That suppliers of TBA competing with Goodrich and Firestone at the wholesale level have been foreclosed from access to Texaco's retail outlets on the same competitive terms as have been made available to Goodrich and Firestone; 2) That competing manufacturers of tires and other TBA items have been foreclosed from access to Texaco's wholesale distributors on the same competitive terms as have been made available to Goodrich and Firestone; 3) That competition between Goodrich and Firestone in selling to wholesale and retail outlets of Texaco has been de-

1. Other oil companies having sales commission agreements with Goodrich are Continental Oil Company, Jenney Manufacturing Company, Shell American Petroleum Company, The Ohio Oil Company and Emblem Oil Company.

stroyed; 4) That a substantial number of Texaco's petroleum distributors and service station operators have been denied their right to act as independent businessmen in exercising freedom of choice as to the TBA products which they may purchase and stock for resale; and 5) That the consuming public has been deprived of the benefits of free competition at the wholesale and retail levels insofar as TBA distribution through service station outlets under the sales commission plan is concerned.

(1733) Respondents deny these allegations and assert that their sales commission contract has strengthened competition in the distribution of TBA. Texaco, moreover, denies that it has power to control the TBA buying habits of its wholesale and retail outlets and denies that its sales efforts on behalf of Goodrich and Firestone are in any respect improper or coercive.

After hearings extending from September 1956, into December 1958, the hearing examiner filed his initial decision on October 23, 1959, dismissing the complaint as to Goodrich but holding that Texaco, by forcing a substantial number of its dealers to purchase sponsored TBA through use of threats of lease cancellation or other retaliatory action, has engaged in unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act. He further held that the charges of the complaint are sufficiently broad to sustain an order prohibiting overt acts of coercion on the part of Texaco even though he concluded the sales commission contracts themselves are not illegal. The initial decision contained an order against Texaco prohibiting future acts of coercion or intimidation designed to force Texaco dealers to purchase TBA products sponsored by Texaco.

Both sides have appealed from the initial decision. Counsel supporting the complaint contend that, while the

order entered by the hearing examiner is well supported by the evidence of record, it will not be an effective means of remedying the unlawful effects on competition caused by the sales commission plan. They seek an order restraining respondents from continuing with their present sales commission agreements and enjoining them from entering into similar agreements in the future. They also contend that Texaco should be enjoined from purchasing TBA products from any manufacturer or other vendor of such products for resale to any wholesalers or retailers of Texaco petroleum products, "* * * or for distribution in any other manner, directly or indirectly, to any of the aforesaid wholesalers or retailers of Texaco petroleum products."

Texaco appeals claiming, among other things, that the hearing examiner erred as a matter of fact in finding that Texaco has coerced its dealers to purchase substantial amounts of sponsored TBA and as a matter of law in concluding that such action by Texaco constitutes an unfair method of competition and an unfair act or practice in commerce within the meaning of Section 5 of the Federal Trade Commission Act.

(1734) Reply briefs were filed by Texaco and Goodrich to the appeal brief of counsel supporting the complaint and by counsel supporting the complaint to the appeal brief of Texaco. Oral argument was heard by the Commission on June 20, 1960, and the matter is now before the Commission for decision. Although there is evidence in the record tending to show that Texaco has in fact coerced its dealers to purchase sponsored TBA through use of threats of lease cancellation or other retaliatory action, we find that Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics. The determination of whether Texaco's exercise of such economic power in favor of Firestone

and Goodyear under the oil company's sales commission contracts with these rubber companies constitutes an unfair method of competition depends, therefore, upon *the competitive effects* of these sales commission contracts; not upon whether Texaco has exercised its power to implement such contracts through the use of overt coercive tactics, or by more subtle, but equally effective, means.

At issue in this litigation, then, is the legality of a particular method of distributing TBA used by respondents. A key fact in evaluating the competitive effects of respondents' use of the sales commission method of distributing TBA is the fact that Texaco has sufficient economic power with respect to its retail and wholesale petroleum distributors to cause them to purchase substantial quantities of the brand of TBA sponsored or sold by Texaco. But such economic power is a fact existing independently of any particular method of distributing TBA which Texaco may use. Whether the sales commission agreements between Firestone and Texaco and Goodrich and Texaco are unlawful, must depend, therefore, upon the characteristics and the competitive effects of these sales commission agreements. For reasons set forth hereinafter, we conclude that this case must be remanded in order that market data may be introduced to show the competitive effects of Texaco's sales commission agreements with Goodrich and Firestone upon competing suppliers of tires, batteries and accessories at the manufacturing, wholesale and retail levels.

Characteristics of the Sales Commission Plan

Motorists may purchase replacement TBA items from several major classes of distributors. Manufacturers of these items, for example Goodrich, maintain either company-owned or (1735) franchised wholesale and retail distribution outlets in all of the marketing areas for TBA

products considered in the course of the hearings in this case. Gasoline service stations constitute a second major class of outlets for TBA products.

The complaint alleges that "Service stations, by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They constitute a large and increasingly important market for TBA products." Goodrich admits the truth of this allegation in its answer and Texaco, in the course of the proceedings, introduced evidence tending to show that service stations accounted for almost 43 percent of all new replacement tires and tubes sold to motorists in the United States in 1956. Total TBA sales by gasoline service stations amounted to approximately $800,000,000 in 1956, according to Texaco.

The sales commission method of distributing TBA is a complex marketing technique affecting competitive relationships among manufacturers, wholesalers and retailers of various products linked together by but one common factor: the motor vehicle. Although Goodrich is one of the largest rubber companies in the United States and a leading manufacturer of tires, inner tubes and certain related products such as fan belts and radiator hose, the company does not manufacture automotive batteries at all, but instead purchases for resale batteries marked with the "B. F. Goodrich" label from The Gould National Battery Company and Globe-Union Battery Company. Among the automotive accessories purchased for resale by Goodrich under the original manufacturers' own brand names are the following:

Product	*Brand Name*
Oil Filters	Fram
Spark Plugs	Champion
Wiper Blades	Trico; Anco
Waxes	DuPont; Simoniz; Mac's; Johnson
Battery Cables	Auto-Lite

Goodrich operates 5 tire manufacturing plants across the country, located in Ohio, Pennsylvania, Alabama, Oklahoma and California. Tires are shipped from these plants (1736) to 15 company-operated merchandising warehouses (also called master warehouses) situated in principal metropolitan areas of the nation. These plants and master warehouses in turn ship to 31 district warehouses of Goodrich located in various parts of the country. Batteries and accessories are shipped directly from the original manufacturers' own plants to master and district warehouses of Goodrich.

There are some 489 wholesale and retail stores operated by Goodrich throughout the United States, and these stores sell not only TBA products, but also many different household and home supply items, including toys, bicycles, power tools, lawn and garden equipment and furniture. In addition to these company-owned stores, Goodrich markets its products through various types of independent wholesale and retail distributors and dealers throughout the United States, including specialized tire dealers, new car dealers, garages, and service stations. Total net sales of the rubber company exceeded one-half billion dollars in 1954.

Texaco is a large producer and distributor of petroleum products. The company's products are sold at wholesale and retail in every state of the United States. Total net sales by the oil company exceeded one and one-half billion dollars in 1954.

Texaco sells its refinery products directly to some 31,000 retail outlets in the United States. These directly-supplied accounts are of two principal classes: 1) lessee-operated stations, and 2) contract dealers. Lessee-dealers lease service station properties from Texaco and these properties have facilities enabling the lessees to stock and sell TBA products. Contract stations are owned by the station operators themselves or are leased from someone other

than Texaco. An undetermined number of Texaco's contract stations apparently do not have facilities to stock and sell TBA, or to do maintenance work on motor vehicles. Contract dealers of this description may be garages or restaurants and taverns with outside gasoline pumps.

Texaco sells its petroleum products indirectly to about 7,500 additional service stations through approximately 711 wholesale distributors. Wholesale distributors either own bulk storage facilities or lease them from Texaco. Many wholesale distributors also distribute TBA products along with petroleum products.

(1737) Goodrich maintains either company-owned or franchised independent wholesale and retail dealers in most principal cities of the United States and in many smaller communities as well. In cities and towns where Texaco retail stations are located, such stations are assigned to either the local Goodrich or the local Firestone dealer, or sometimes to both. The assigned TBA distributor is intended to be the supply point from which the Texaco dealer will purchase a substantial percentage of his requirements of TBA.

Texaco dealers who operate service station, as distinguished from non-service station establishments, such as restaurants and garages which also sell gasoline, not only buy and sell Texaco petroleum products but also offer TBA at their stations and in addition perform various automotive services and repairs. Texaco maintains sales offices throughout its marketing area and employs salesmen whose duty it is to solicit orders for Texaco petroleum products from Texaco dealers.

When orders for petroleum products are obtained, the salesmen cause such products to be delivered to the Texaco service station dealers who pay for them at time of delivery or at other specified times. The same Texaco salesmen *also* act as agents for Goodrich and Firestone, solici-

ting TBA orders from Texaco dealers, frequently accompanied on their rounds by salesmen employed by the local Goodrich or Firestone distributors. If TBA orders are obtained, they are turned in to the appropriate TBA suppliers— the local distributors of either Goodrich or Firestone—who deliver the merchandise and are paid by the Texaco dealers. The TBA suppliers, in turn, make reports of such sales to the District Sales Offices of their respective companies.

Under the terms of the sales commission contracts between Goodrich and Texaco and Firestone and Texaco, Texaco is entitled to a commission amounting to 10 percent of the net sales value of all sponsored (i.e., Goodrich or Firestone) merchandise sold to Texaco retail dealers, as consideration for the assistance given by the Texaco sales organization in obtaining TBA orders from Texaco dealers.[2]

(1738) Goodrich's TBA sales to Texaco accounts increased from $12.7 million in 1952 to $18.9 million in 1956, while Firestone's sales volume advanced from $29.6 million in the former year to $39.9 million in the latter. By 1956, Goodrich and Firestone were selling a combined total of almost $60 million in TBA to Texaco accounts each year, and were paying Texaco approximately $5.4 million in sales commissions annually. During the five year period 1952 through 1956, total sales to Texaco accounts by Goodrich and Firestone amounted to $245.1 million, and the two rubber companies paid over $21.8 million in sales commissions to Texaco.

Sales by Goodrich under its sales commission agreements with other oil companies have also increased over

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2. On purchases of sponsored TBA by its wholesale distributors, Texaco is entitled to a commission of 7½ percent. A 5 percent commission is payable in a few instances not significant for present purposes.

the years. In 1952 there were three oil companies other than Texaco having such agreements with Goodrich: Continental Oil Company, Jenney Manufacturing Company and Shell American Petroleum Company. Total sales by Goodrich to outlets of these three oil companies rose from $3.5 million in 1952 to $7.8 million in 1955, chiefly due to increases in sales to Continental Oil Company accounts. Then, in 1953, Goodrich undertook sales commission arrangements with Ohio Oil Company and Emblem Oil Company, and by 1955 was selling about $2.6 million in TBA to outlets of these two oil companies.

Goodrich has attempted to supply service station accounts from local independent Goodrich wholesalers wherever possible, as shown by Table I, below:

TABLE I

NUMBER OF OIL COMPANY OUTLETS
SUPPLIED BY INDEPENDENT GOODRICH DISTRIBUTORS
1952 THROUGH 1955

Date	*Total Oil Company Outlets*	*Supplied by Independent Distributors*	*Percentage by Independent Distributors*
12/31/50	2040	442	22%
12/31/51	2469	820	33%
12/31/52	4075	1876	46%
12/31/53	5065	2486	49%
12/31/54	6065	3127	52%
12/31/55	7042	3908	55%

(1739) The same trend is discernible for Texaco outlets, as shown by Table II:

TABLE II

NUMBER OF TEXACO OUTLETS SUPPLIED BY INDEPENDENT GOODRICH DISTRIBUTORS 1952 THROUGH 1955

Date	*Total Texaco Accounts*	*Supplied by Independent Distributors*	*Percentage by Independent Distributors*
12/31/50	1874	438	22%
12/31/51	2245	743	33%
12/31/52	2763	1228	44%
12/31/53	3189	1664	52%
12/31/54	3864	2172	56%
12/31/55	4444	2636	59%

Table II indicates that the number of Texaco accounts assigned to Goodrich increased from 1874 in 1950 to 4444 in 1955, and that during these years the number of such accounts supplied by independent local distributors of Goodrich TBA items increased from 22 percent to 59 percent. Table I shows that the number of accounts assigned to Goodrich by all six oil companies having sales commission agreements with Goodrich increased from 2040 in 1950 to 7040 in 1955, and that the percentage of such accounts supplied by independent local Goodrich distributors increased from 22 percent to 62 percent during the same years.

Taken together, the facts set forth above indicate the possibility of serious potential threats to competition resulting from Goodrich's sales commission agreements with Texaco and other oil companies. Service station outlets of Texaco blanket the entire United States, as do Goodrich's TBA distribution facilities. The total volume of sponsored TBA sold to Texaco outlets increased from barely over $40 million in 1952 to approximately $60 million in 1956, and during the same years Goodrich entered

into sales commission agreements with several other oil companies as well.

(1740) However, the record in this case does not contain sufficient market data to enable the Commission to assess the competitive effects of the sales commission method of distributing TBA employed by these respondents. The case will be remanded to the hearing examiner for the taking of evidence indicating the competitive effects of the sales commission contracts at the manufacturing, wholesale and retail levels of TBA distribution.

March 9, 1961

Order Setting Hearing Pursuant to Remand by the Commission

(June 20, 1961)

(1741)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

DOCKET No. 6485

[SAME TITLE]

Upon consideration of this matter on appeal from the initial decision of the hearing examiner, the Commission determined that the record as presently constituted does not provide an adequate basis for an informed determination of the competitive effects of the sales commission method of distributing tires, batteries and accessories employed by respondents, and issued its order remanding this proceeding to the hearing examiner for the reception of such further evidence concerning the competitive effects of the respondents' practice as may be offered, in conformity with the views expressed in the opinion of the Commission issued in this proceeding.

IT IS THEREFORE ORDERED that in conformity with the order of remand of the Commission, this proceeding is hereby set for hearing as follows:

Monday, July 17, 1961—10:00 A.M.—3 days, Room 332 Federal Trade Commission Building, Washington, D. C.,

to receive testimony and other evidence which may be offered on the competitive effects of the sales commission method of distributing tires, batteries and accessories employed by respondents.

Earl J. Kolb,
Hearing Examiner.

June 20, 1961.

Order Cancelling Hearings

(July 10, 1961)

(1742)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

DOCKET No. 6485

[SAME TITLE]

The Hearing Examiner has been served with a summons and complaint praying that the Hearing Examiner, among others, be enjoined by a temporary and permanent injunction from holding further hearings in this proceeding.

It is the opinion of the Hearing Examiner, in view of the proceedings filed, that there is no occasion to hold the hearings set to begin on July 17, 1961, until such time as the Court has disposed of the motion for preliminary injunction.

IT IS THEREFORE ORDERED that the hearings now set for July 17, 1961, three days, in Washington, D. C., be cancelled subject to being reset on ten days' notice after disposition by the District Court of respondents' motion for preliminary injunction to restrain the Hearing Examiner from proceeding with further hearings in this case.

Earl J. Kolb,
Hearing Examiner.

July 10, 1961.

• • •

Order Directing Proceedings on Remand to be Conducted Expeditiously and Setting Date for Filing Initial Decision

(June 19, 1962)

(1744)

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Commissioners:

Paul Rand Dixon, Chairman
Sigurd Anderson
William C. Kern
Philip Elman
Everette MacIntyre

[SAME TITLE]

The Commission, by its order of March 9, 1961, remanded this proceeding to the hearing examiner for the reception of further evidence. Hearings were subsequently scheduled by the hearing examiner to commence July 17, 1961. These hearings were cancelled by the examiner after respondents brought an action in the United States District Court for the District of Columbia to enjoin the Commission from holding further hearings in this matter.

The Commission has determined that any further delay in this proceeding, not required by court order, would be inconsistent with its established policy, as set forth in Section 4.1 of the Rules of Practice for Adjudicative Proceedings, that "to the extent practicable and consistent with requirements of law, such proceedings shall be conducted expeditiously." Accordingly,

Order Directing Proceedings on Remand to be Conducted Expeditiously and Setting Date for Filing Initial Decision

It is Ordered that further hearings pursuant to the Commission's remand of this proceeding to the hearing examiner be held and concluded at the earliest practicable time, that (1745) the hearing examiner shall file his initial decision on or before October 1, 1962, and that counsel shall make every effort to terminate this proceeding expeditiously and to enable the initial decision to be filed on or before such date.

By the Commission.

Joseph W. Shea,
Joseph W. Shea,
Secretary.

ISSUED: June 19, 1962.

Order Setting Hearings

(June 27, 1962)

(1746)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

On March 9, 1961, the Federal Trade Commission issued its order remanding this proceeding to the hearing examiner for the reception of such further evidence concerning the competitive effect of respondents' practices as may be offered.

On June 20, 1961, the hearing examiner issued his order setting hearing for July 17, 1961, in conformity with said order of remand, issued by the Commission.

Thereafter, on July 7, 1961, respondents filed a complaint in the District Court of the District of Columbia, praying that the hearing examiner, among others, be enjoined by a temporary and permanent injunction from holding further hearings in this proceeding. After being served with this complaint, the hearing examiner on July 10, 1961, cancelled the hearing set for July 17, 1961, pending disposition of the injunction proceeding.

The court denied respondents' motion for temporary injunction, and on June 10, 1962, entered its order on complainants' motion for summary judgment, which in effect, requires the hearing examiner to complete the taking of testimony and other evidence and issue his initial decision by October 2, 1962. In addition, the court certified this matter under 28 U. S. C. 1292(b), and provided that such certification shall not *ipso facto* stay proceedings before the Commission.

Order Setting Hearings

(1747) On June 22, 1962, the U. S. Court of Appeals for the District of Columbia Circuit denied appellants petition for injunction on the basis that it did not appear that lengthy and costly hearings are contemplated, duplicating prior proceedings.

It is the opinion of the hearing examiner that the order of remand is limited in scope, and that no protracted or lengthy hearings will be necessary. However, in order to comply with the time limitation set by the District Court for completion of testimony and issuance of an initial decision by the hearing examiner, it will be necessary to proceed promptly with hearings.

It is the further opinion of the hearing examiner, that the parties have had ample time to prepare for trial since the issuance of order of remand and during the pendency of the injunctive proceeding, since July 7, 1961.

IT IS THEREFORE ORDERED, that this proceeding be set for hearing to begin Monday, July 16, 1962, in Room 532, Federal Trade Commission Building, Washington, D. C., and to proceed by consecutive hearings until completion of testimony in support of and in opposition to the charges of the complaint.

EARL J. KOLB,
EARL J. KOLB,
Hearing Examiner.

June 27, 1962.

Motion of Respondents

(July 2, 1962)

(1748)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

To HONORABLE EARL J. KOLB, Hearing Examiner

Respondents, without prejudice to their contention, heretofore and now asserted that the remand order of the Commission dated March 9, 1961, was improperly, invalidly and unlawfully made; that the Commission and the Examiner have no jurisdiction, power or authority under said order to hold hearings, to retry the issues already disposed of, to readjudicate said issues or undertake any other action under said order of March 9, 1961, and without prejudice to the contention that any action taken under said order, including action proposed to be taken under the order of June 27, 1962, made by Honorable Earl J. Kolb, Hearing Examiner, will deprive respondents of property without due process of law in violation of the provisions of the Constitution of the United States, and likewise in violation of the provisions of the Administrative Procedure Act, and respondents having no other alternative before this Commission, hereby move that said order of (1749) June 27, 1962 be vacated, or in the alternative but only if the said order is not vacated, that it be modified as follows:

1. By providing for disclosure of the names, addresses, business connections and substance of the testimony of each witness whom counsel supporting the complaint proposes to call in connection with any hearing which may be held under the order of March 9, 1961; and likewise

providing that counsel supporting the complaint furnish to respondents for inspection or copying, all documents, papers, books or physical exhibits, computations or other paper writings of any kind and description which said counsel supporting the complaint intends, expects or may offer in evidence in the course of any hearings which may be held under said order of March 9, 1961; by providing that the disclosures above requested be made sufficiently far in advance of any hearing which may be scheduled under said order, so that respondents may have opportunity to prepare for the cross-examination of witnesses and for taking whatever action may be required respecting documentary matter to be offered in evidence.

2. By providing adequate time after the disclosures required by item numbered 1, above may have been made to prepare for trial prior to the holding of any trial hearings herein.

3. By providing that no evidence, whether by way of testimony or documentary not timely disclosed pursuant to (1750) the terms of paragraph numbered 1, above shall be admitted into evidence.

4. By providing a sufficient interval of time between the closing of the case by counsel supporting the complaint and the opening of respondents' evidence to give respondents adequate time and opportunity, at least equal to such time and opportunity as has been afforded to counsel supporting the complaint, to prepare their own evidence to meet whatever evidence may be adduced by counsel supporting the complaint.

As grounds for the foregoing motion, respondents respectfully show as follows:

Motion of Respondents

I.

The District Court action for injunction (Texaco Inc. et al. v. Federal Trade Commission, et al), contrary to the inference contained in the order dated June 27, 1962, has not been disposed of by the courts. The matter is pending on appeal in the Court of Appeals. In addition, respondents, on June 28, 1962, petitioned the Supreme Court of the United States for injunctive relief. This petition likewise is pending.

As the injunction action has not been finally disposed of, it is submitted that the Examiner's order of July 10, 1961 cancelling hearings herein "pending disposition of the injunction proceeding" should remain in force and effect.*

(1751)

II.

The order of the Commission of March 9, 1961, is a broad order of remand instructing its counsel to adduce and its Examiner to receive any evidence relating to the competitive effects of the practices challenged by the complaint on the manufacturing, wholesale and retail levels.

* Respondents have been willing and are now willing to accept Judge Hart's suggestion, stated by him at the hearing on June 20th in the District Court action as follows (S.M. June 20, 1962, pp. 11-12):

"[11] The Court: Well, I don't quite see how we can work this out pursuant to my suggestion. Now, my suggestion was that we have a stipulation approved by the Court, that the Government would not go ahead with the hearing until the Court [12] of Appeals had acted on your appeal either by granting it or denying it, or whatever. If your special appeal is denied, then the time for the execution of the order signed yesterday would be automatically extended beyond October 2nd by the number of days expiring between yesterday and the time the Court of Appeals handed its decision down here."

Motion of Respondents

This order of remand has left respondents entirely without a guide as to the type and nature of evidence to be adduced. This is particularly true as the complaint deals in general terms with sales of tires, batteries and accessories by or through outlets handling the Texaco products scattered throughout the country and numbering in the neighborhood of 40,000. As the issue of competitive effect has already been fully tried, respondents are entirely mystified as to the nature of the evidence which the Commission wishes to have adduced.

While the order of the Examiner recites that there (1752) has been ample time to prepare for new trial, this has not been the case as no one, even the Commission's counsel, has had any conception of what evidence or even what type of evidence is to be adduced at the presently scheduled hearings. Attention is called to the fact that as late as June 5, 1962, an attorney representing the Commission, when asked by the Court with respect to the hearings now scheduled under the remand what evidence the Commission was going to put in, indicated that this was unknown. The following colloquy took place in the United States District Court before Judge George L. Hart on June 5, 1962, in the course of the action referred to in said order of June 27, 1962:

"The Court: All right, now what evidence are you going to put in?

Mr. Nebeker: Pardon?

The Court: What witnesses are you going to call?

Mr. Nebeker: This is unknown."

If on June 5th the Commission's counsel did not know what evidence was going to be put in under the order of March 9, 1961, it is clear that respondents had no idea as to the nature of the evidence required to answer whatever Commission's counsel may adduce, and they have none now.

Under the circumstances here stated, to expect respondents to be in position to cross-examine wholly unidentified witnesses, to be able to deal with statistical evidence which (1753) they have never seen, and what is more, to adduce on consecutive days evidence in answer to the evidence so adduced, for all practical purposes deprives the respondents of any real opportunity to defend themselves, to conduct any meaningful examination or cross-examination of witnesses, or to adduce evidence in answer to whatever counsel supporting the complaint may place into the record. The type of proceeding presently contemplated by the order of June 27, 1962, would violate the Administrative Procedure Act requiring adequate notice and adequate opportunity to cross-examine and defend and will by the same token deprive respondents of their rights and property without due process of law in violation of the constitutional requirements.

III.

The Hearing Examiner's order requiring continuous hearings is a direct violation of Judge Hart's order of July 19, 1962 in the District Court action. That order provides:

> "FURTHER ORDERED that any steps in said Proceeding, pursuant to said remand, shall be conducted in such a manner that the plaintiffs shall have equal time and opportunity with Commission's Counsel in connection with preparing and adducing further evidence, if any, as well as preparing any required briefs or suggested findings of fact and conclusions of law."

It is obvious that the Hearing Examiner's order does not give equal time and opportunity to respondents here to prepare for the production of further evidence.

Motion of Respondents

Counsel supporting the complaint has had since March (1754) 9, 1961 to prepare for the rehearing. In any event, such counsel has had since June 5, 1962, when Judge Hart stated from the Bench the substance of his order of June 19th. As respondents have not been advised in any way of the nature of the testimony which counsel supporting the complaint has been preparing, it has been entirely impossible for them to prepare to adduce evidence to meet whatever counsel supporting the complaint may place into evidence on the rehearings. Respondents suggested the portion of Judge Hart's order above quoted in order to avoid the precise situation which would be forced upon them if the Hearing Examiner's present order is allowed to stand. It is essential that respondents be given equal time to prepare to meet the case of counsel supporting the complaint after that case has been fully disclosed to respondents.

WHEREFORE it is respectfully submitted that the relief prayed for in this motion be granted.

Dated: July 2, 1962.

Amzy B. Steed
James O. Sullivan

ROYALL, KOEGEL, HARRIS & CASKEY
by Kenneth C. Royall
FREDERICK W. P. LORENZEN
Frederick W. P. Lorenzen
Attorneys for Plaintiff
Texaco Inc.

White & Case
by Edgar E. Barton
Attorneys for Plaintiff
The B. F. Goodrich Company

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Order Denying Respondents' Motion to Cancel Hearings and Requiring Certain Disclosures

(July 11, 1962)

(1771)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

This proceeding is before the hearing examiner on motion of respondents and answer thereto filed by counsel supporting complaint. By said motion the respondents move that the hearing examiner vacate his order of June 27, 1962, setting this case for hearing, or in the alternative, that the order be modified by providing for disclosure of names of witnesses and documents to be used in advance of hearings.

The hearing examiner is of the opinion that the disclosures requested by the respondents are such as could be obtained by conference with the attorney supporting complaint, with or without the participation of the hearing examiner.

The hearing examiner having considered said motion of respondents, the answer thereto and the record herein and being of the opinion that the scope of the remand in this proceeding is so limited that the procedure requested by respondents is neither required or warranted.

IT IS THEREFORE ORDERED that the respondents' motion to vacate the order of the hearing examiner, issued June 27, 1962, or in the alternative requiring certain disclosures, be, and the same is, hereby denied.

July 11, 1962.

EARL J. KOLB,
Earl J. Kolb,
Hearing Examiner.

Initial Decision

(September 24, 1962)

(1863)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

DOCKET No. 6485

[SAME TITLE]

EARL J. KOLB, Hearing Examiner.
PETER J. DIAS, for the Commission.

WHITE & CASE, New York, New York,
by EDGAR E. BARTON, for respondent
The B. G. Goodrich Company;

ROYALL, KORGEL, HARRIS & CASKEY,
New York, New York,
by KENNETH C. ROYALL, for respondent
The Texas Company.

This proceeding is based upon a complaint brought under Section 5 of the Federal Trade Commission Act, charging as unlawful, certain contracts entered into by the respondents, The B. F. Goodrich Company and The Texas Company, whereby The B. F. Goodrich Company agreed to pay The Texas Company a sales commission on all tires, batteries and accessories sold by The B. F. Goodrich Company to service stations and other outlets of The Texas Company. The complaint further charged that respondent, The B. F. Goodrich Company, had entered into similar contracts with certain oil companies other than The Texas

Company, and that The Texas Company had entered into a similar contract with The Firestone Tire & Rubber Company.

(1864) The B. F. Goodrich Company and The Texas Company are engaged in business in practically the entire United States. Counsel supporting the complaint selected five trading areas as being typical of the general operations of respondents under the sales commission contract. Pursuant to this selection, testimony was taken in the Chicago, Omaha, Lincoln, Dallas and Atlanta areas.

After the completion of the taking of testimony, the hearing examiner filed his initial decision on October 23, 1959, dismissing the complaint as to The B. F. Goodrich Company, but holding that The Texas Company, by acts of coercion and intimidation had forced a substantial number of its dealers to purchase sponsored TBA, in violation of Section 5 of the Federal Trade Commission Act. Both sides appealed from the initial decision, and on March 9, 1961, the Commission issued its order remanding this proceeding to the hearing examiner "for the reception of such further evidence concerning the competitive effects of the respondents' practices as may be offered in conformity with the views expressed in the accompanying opinion of the Commission."

In its opinion accompanying said order of remand, the Commission stated:

> "Although there is evidence in the record tending to show that Texaco has in fact coerced its dealers to purchase sponsored TBA through use of threats of lease cancellation or other retaliatory action, we find that Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics. The determination of whether Texaco's exercise of

such economic power in favor of Firestone and Goodyear [sic] under the oil company's sales commission contracts with these rubber companies constitutes an unfair method of competition depends, therefore, upon the competitive effects of these sales commission contracts; not upon whether Texaco has exercised its power to implement such contracts through the use of overt coercive tactics, or by more subtle, but equally effective, means."

(1865) In its opinion, the Commission reversed the conclusions of the hearing examiner that respondent, The B. F. Goodrich Company, should be dismissed because of the absence of evidence that The B. F. Goodrich Company engaged in, or participated in, any acts or practices designed to force dealers and distributors of The Texas Company to purchase Goodrich TBA products. The opinion further pointed out that the issue in this proceeding was the legality of the particular method of distribution of TBA used by The Texas Company and The B. F. Goodrich Company, known as the sales commission plan. The decision of the Commission and the matters contained in its opinion remanding this case, are binding upon this hearing examiner.

Pursuant to said order of remand, the hearing examiner set hearings to begin July 17, 1961, which hearings were cancelled, to be reset after disposition of a petition for an injunction to restrain the hearing examiner from proceeding with further hearings in this case, which was filed by respondents in the District Court for the District of Columbia.

Thereafter, on June 19, 1962, the Court denied respondents' petition for injunction and entered its order for summary judgment which, in effect, requires the hearing examiner to complete the taking of testimony and other

evidence, and issue his initial decision by October 1, 1962. Respondents immediately filed an appeal with the U. S. Court of Appeals for the District of Columbia, and in addition, filed a petition for preliminary injunction which was denied by said Court on June 22, 1962.

Upon disposition of the various motions before the U. S. District Court and Court of Appeals, the hearing examiner set this case down on July 16, 1962, to proceed with consecutive hearings until final completion of this case. Hearings were held and case closed July 19, 1962.

This proceeding is now before the hearing examiner for final consideration in accordance with the remand of the Commission, upon the complaint, answer thereto, testimony and other evidence, proposed findings of fact and conclusions submitted by the parties and briefs in reply thereto. The hearing examiner has given consideration to the proposed findings of fact, conclusions and briefs in support thereof, submitted by the parties, and all findings of fact and conclusions of law proposed by the parties respectively not herein specifically found or concluded are herewith rejected.

(1866) In its order of remand, the Commission did not vacate or set aside the initial decision, nor does the order or opinion take issue with the factual findings made, but disagreed with certain conclusions reached by the hearing examiner. For the purpose of clarity, the hearing examiner hereby adopts and incorporates into this initial decision, the findings of fact set out in the previous decision. The hearing examiner herby strikes the conclusions and order contained in said original initial decision and makes additional findings of fact based upon the record herein and the evidence adduced, subsequent to the remand.

Initial Decision

FINDINGS OF FACT ADOPTED FROM INITIAL DECISION ISSUED PRIOR TO REMAND

1. Respondent, The B. F. Goodrich Company (hereinafter sometimes referred to as "Goodrich"), is a corporation organized, existing and doing business under the laws of the State of New York with its principal office and place of business located at 500 Main Street, Akron, Ohio. Said respondent, among other things, is engaged in the sale and distribution in interstate commerce of tires, batteries, accessories and supplies (hereinafter referred to as "TBA").

2. Respondent, The Texas Company (hereinafter sometimes referred to as "Texas" or "Texaco"), is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and place of business located at 135 East 42nd Street, New York 17, New York. Said respondent is engaged in the production and in the sale and distribution in interstate commerce of petroleum products, including gasoline and lubricants sold to petroleum wholesalers and service stations.

3. There are a large number of service stations and distributors which sell principally the petroleum products of The Texas Company. These service stations which purchase Texaco products for resale at retail to the consuming public are classified as "C" stations and "D" stations. A "C" station is one that is either owned or leased by The Texas Company, and in turn leased by it to the dealer. A "D" station, which is sometimes called a (1867) contract station, is either owned by the operator or leased by him from someone other than The Texas Company.

4. Sales to service stations are made by The Texas Company either direct with delivery from company-operated bulk plants or through consignees, who are designated as "B" accounts. A consignee is one who operates a bulk plant owned by The Texas Company or, in some instances, by the consignee. The Texas Company stocks the plant with its petroleum products, and the consignee delivers the products and is compensated by commissions. He is a wholesaler performing the same function that a Texas salary-operated plant would perform. The Texas Company also sells its petroleum products to distributors designated as "E" accounts, who operate bulk storage plants, purchase Texaco products, and sell such products to service station dealers and consumers.

5. The number of Texaco accounts in the various classifications during the past few years were as follows:

(a) Texaco Lease ("C") stations—

1951—11,570
1952—11,858
1953—12,070
1954—12,674
1955—13,366
1956—13,764 (as of June 1956)

(b) Texaco contract ("D") stations—

1952—17,708
1953—16,913
1954—16,853
1955—16,806
1956—(June) Not available.

(c) Texaco consignee ("B") accounts—

1951—1,225
1952—1,172
1953—1,128
1954—1,124
1955—1,150
1956—(June) Not available.

(1868)

(d) Texaco distributors ("E") accounts—

1951—687
1952—664
1953—652
1954—697
1955—711
1956—(June) Not available.

6. The usual form of lease entered into by the respondent Texas with its lessee dealers or "C" stations was for a term of one year, and thereafter from year to year, subject to termination by either party at the end of the first or any subsequent year on ten days' prior written notice. Rental provided by the lease was usually a flat rental, plus a cents-per-gallon charge, dependent upon the location of the station, financial condition of the lessee, and potential income. Such lease contained so-called "house-keeping" provisions relating to the use, maintenance and general appearance of the station. Breach of any of the terms, conditions or covenants of the lease by the lessee constituted grounds for immediate termination by The Texas Company without notice to the lessee.

7. In addition to the lease, The Texas Company entered into an "Agreement of Sale" with its dealers. These agreements provided for the purchase of an annual minimum and maximum quantity of Texaco gasoline, oils and

greases at the current posted price at the time delivery was made. These agreements were usually for a period of one year, and from year to year thereafter, and could be terminated at the end of the initial term, or any anniversary thereof, by giving thirty days' written notice, with automatic termination upon termination of lease of property. These agreements also provided for a quantity discount or rebate, payable at the end of the year.

8. Tires, batteries and accessories have become a necessary and integral part of the business operation of the Texaco dealer. He cannot progress in his business unless he has the revenue from that portion of his business and also be in a position to serve his customers completely. It is to the interest of The Texas Company to have its dealers engaged in the sale of TBA as this builds a stronger dealer organization and increases the sale of gasoline.

(1869) 9. On March 1, 1940, The Texas Company entered into a sales commission agreement with The B. F. Goodrich Company which provided for the payment of commissions to Texas on the sales by Goodrich of its tires, tubes, batteries and auto and home supplies to Texaco outlets, including service stations, distributors and consignees, in consideration of the services to be rendered by the Texas sales organization in promoting the sale of these products. This agreement was modified from time to time and was later superceded by contract dated November 23, 1943, which provided, among other things, for the payment of a commission of 10 percent on sales to "C" and "D" stations, and 7½ percent on sales to "B" and "E" stations by Goodrich. The Texas Company also entered into a similar sales commission agreement with The Firestone Tire & Rubber Company.

10. The services which were performed by The Texas Company pursuant to its contract with Goodrich and Firestone in promoting the sale of TBA products consisted principally of the following:

(a) Texas personnel, when interviewing prospective dealers for new or established service stations, advised them of the importance of TBA and recommended the TBA products of Goodrich and Firestone, and when dealer was selected would at times notify Goodrich or Firestone of such selection and introduce the new dealer to sales representatives of Goodrich or Firestone and assist the new dealer in setting up an adequate TBA inventory.

(b) Texas salesmen were encouraged by Texas management to write up orders for sponsored TBA without waiting for a formal request from a dealer.

(c) Texas frequently conducted dealer meetings and provided training courses for dealers, both of which included suggestions for the displaying and merchandising of TBA, in some instances with the active participation of Goodrich and Firestone.

(d) Texas incorporated suggestions on merchandising TBA in its dealer magazines and arranged for advertising and promotions, which included TBA products of Goodrich and Firestone, and participated in promotions instituted by Goodrich and Firestone.

(e) Texas made TBA products available to credit card holders, including merchandise sold on deferred payments without carrying charge.

(1870) 11. Both Goodrich and Firestone have sold substantial quantities of their TBA products to Texaco outlets. Sales by both Goodrich and Firestone during the years 1952 to 1956 to the various classes of accounts were as follows:

CLASSES OF ACCOUNTS

Year	Rubber Co.	"C"	"D"	"E"	"B"	Total
1952	G	$ 5,803,896	$ 1,911,638	$ 1,605,665	$ 3,425,084	$ 12,746,283
	F	13,838,565	6,210,771	3,030,989	6,509,406	29,589,731
1953	G	6,832,705	1,807,688	1,804,391	3,480,551	13,925,335
	F	15,843,023	5,634,766	3,210,938	6,310,907	30,999,634
1954	G	7,698,833	1,826,738	1,726,499	3,571,274	14,823,344
	F	16,441,762	5,326,669	3,070,478	5,905,508	30,744,417
1955	G	9,444,122	2,151,778	2,003,965	4,334,376	17,934,244
	F	19,464,784	6,036,009	3,731,307	6,330,072	35,562,172
1956	G	10,515,043	2,159,457	1,947,333	4,310,815	18,932,648
	F	23,547,120	6,569,198	3,386,318	6,376,622	39,879,258
TOTALS:		$129,429,853	$39,634,712	$25,517,883	$50,554,615	$245,137,066

JA 209
Initial Decision

(1872) 12. Based upon the foregoing sales, Goodrich and Firestone paid Texas the following annual sales commissions:

Year	*Rubber Company*	*Commission*
1952	G	$ 1,090,583
	F	2,557,991
1953	G	1,215,084
	F	2,704,976
1954	G	1,310,738
	F	2,678,005
1955	G	1,597,800
	F	3,197,654
1956	G	1,736,811
	F	3,743,852
	TOTAL:	$21,833,494

13. It is the contention of counsel supporting the complaint that because of the relationship, contractual and otherwise, between Texas and its station operators, consignees and distributors, the adoption of the Sales Commission Plan of selling and promoting the sale of TBA entered into by Texas with Goodrich and Firestone has a tendency to lessen, restrain, prevent or eliminate competition in the sale of TBA, and has foreclosed other suppliers of TBA from a substantial portion of the TBA business of the Texaco petroleum outlets.

14. In support of the charges of the complaint, eight former Texaco dealers were called to testify in this proceeding. Five of these dealers testified to pressure being placed upon them relative to the purchase and display of non-sponsored TBA, and two claimed that TBA was in-

volved in the cancellation of their leases. Except for these two dealers, three of the dealers voluntarily left their stations, and the leases of the remaining three were cancelled for reasons not involving the sale of TBA. The testimony relative to pressure and cancellation is summarized as follows:

(a) James S. Zaloudek, a Texas lessee from 1948 to 1954, testified on direct examination that he expected his lease to be cancelled for handling non-sponsored TBA. On cross-examination he admitted that (1873) cancellation might have resulted from difficulties arising from the sale of tires to a customer on credit card without mounting the tires, as required. He eventually had to make good on this sale as the customer resold the tires and defaulted in making payment. This witness further testified to controversies and arguments with Texas representatives relative to the carrying and display of non-sponsored TBA items. He testified that he had been told to get rid of a certain non-sponsored anti-freeze; that he had been required to take certain non-sponsored filters off display and put them in the back room; that he had been told to remove Armstrong tires from the display rack and certain accessories from the shelves, which he refused to do; and that he was forced by Texas representatives to take out some Auto-Lite batteries he had purchased. With reference to the items of TBA which he continued to purchase, he was told by Texas representatives that he should not have them in his station, and finally in 1953 he dealt exclusively with Firestone with the exception of some non-sponsored waxes, polishes and filters; and in 1954 carried 92 percent Firestone and Texaco, the other 8 percent consisting of chains, anti-freeze, filters, oil, polishes and waxes. The Texas salesman denied that he told Zaloudek that he could not handle, and should remove, the various TBA items.

(b) C. F. Sanford, Jr., a Texas lessee from 1953 to 1955, who purchased gasoline from an independent consignee of The Texas Company, testified that shortly after taking over the station he put in a stock of Continental batteries and was informed by a Texas representative that he would either handle Firestone or expect not to renew his lease; that he continued to handle these batteries and was subsequently notified of the cancellation of his lease. It further appears from the testimony in this proceeding that Sanford's operation of the station was generally poor; that he was in financial difficulties and gave bad checks to the consignee for the payment of gasoline. It also appears from the record that due to a highway change about 30 or 40 percent of the business of the station would be lost, and that because of Sanford's financial condition the Texas representative was of the opinion that Sanford would not be able to survive, and that this was the primary factor in recommending the cancellation of the lease and that TBA was not involved.

(c) Harvey G. Talley, a Texas lessee from 1938 to 1951, testified that in 1945 the Texas representative asked him not to display Dayton tires but to place (1874) them in the back room. He later disposed of the Dayton tires and carried only Firestone until the end of his lease. He displayed Southern batteries and a few Willard batteries, but no objection was made to these batteries. Lease was cancelled because he could not stay open twenty-four hours a day, which was required at that particular location.

(d) Richard E. Tidwell, a Texas lessee from October 1953 to March 1955, testified that he consulted with a Texas salesman about handling a cheaper tire, but was told that the company would be more lenient and would look with favor upon dealers who were loyal. He did not take on the cheaper tire on a stocking basis, and when he found out

that Texas Company desired him to carry only one line he endeavored to work along with them. He did carry a cheaper battery, but did not display it. Tidwell voluntarily gave up the station because of a desire to go back into flying.

(e) John D. Scott, a Texas lessee three years, bought only Goodrich TBA, except odds and ends from competitors. Carried Goodrich tires only and Goodrich recapping until about a year before testifying, when he changed recapping to another concern, owned by a friend of his, without any objection from Texas. He also carried Goodrich batteries, only, until about eight months prior to hearing, when he put in a line of cheaper batteries, but did not display them. Lease was cancelled for reasons other than TBA, including controversies over the clock and coca cola machine and excessive drinking on the premises.

(f) Herman Gilbert, Earl M. Gause and H. Arpin Koehler carried Goodrich or Firestone exclusively except for some minor items purchased to meet competition. Their leases were cancelled for reasons not involving TBA.

15. Certain representatives of suppliers of TBA, who were selling in competition with respondent Goodrich, were called as witnesses in this proceeding. These parties testified generally that they had difficulty in selling TBA to Texaco stations and testified specifically as to reasons given by certain Texaco dealers for not buying or selling their TBA items. This testimony as to reasons given by Texaco dealers for not purchasing competitive TBA was allowed under the authority of *Lawlor* vs. *Loewe,* 235 U. S. 522. This latter testimony was received not as proof of the truth of the facts recited, but for the purpose of showing the state of mind of the dealer. This testimony, however, is competent to show that dealers did (1875) not pur-

chase a substantial amount of competitive non-sponsored TBA because of their feeling that they were required to purchase Goodrich or Firestone TBA.

16. In the course of its defense to this proceeding, The Texas Company introduced the testimony of 54 Texaco dealers and 5 ex-Texaco dealers who came from thirteen of the fifteen sales divisions of Texas in the United States. With the exception of 1 ex-dealer witness, who had handled Firestone prior to becoming a Texas dealer and who was completely sold on the Firestone line, all of these witnesses testified to displaying and selling non-sponsored TBA without objection or complaint by Texas.

17. The hearing examiner recognizes that present dealers appearing to testify were under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases. The record, as a whole, shows that there were no exclusive dealers in the sense that they confined themselves entirely to sponsored TBA, as all dealers carry some non-sponsored TBA to satisfy demands of their customers either in varying amounts or on a pick-up basis. Many of the stations do not have the space or finances to stock a complete line of tires and batteries, but instead purchase non-sponsored as well as sponsored items on a pick-up basis to satisfy customer demand. In some instances there was some confusion as to the definition of accessories among the dealers, as some included as accessories items generally known as repair parts, as distinguished from accessories, and some dealers testified to carrying non-sponsored items which were, in fact, not supplied by Firestone or Goodrich. Many of the dealers called maintained a high sales volume in gasoline gallonage, and also oil, and Texas would not jeopardize this gallonage by pressure tactics sufficient to irritate or alienate such deal-

ers. This is also true as to those dealers in outlying locations where station operators are not readily available, but where it is important to Texas to maintain service.

18. As a result of an antitrust suit filed against Standard Oil Company of California, Walter Hochuli, General Sales Manager of The Texas Company, on June 1, 1948, issued a so-called policy letter to the territorial managers, which was subsequently disseminated down the chain of command to salesmen. This letter advised the personnel that they were to consider a Texaco dealer as an independent businessman; that he should be encouraged to expand his business by purchasing TBA; that the personnel have a (1876) right to recommend certain lines, but that Texas has neither the right nor the desire to dictate to the dealer or influence him in any way as to the type of merchandise he should handle, or the source from which he should purchase it; that the Texaco dealer must be permitted to operate as an independent businessman and anyone who violates this policy would be subject to immediate dismissal.

19. The Texas policy was restated to its personnel in 1952 and 1953, and in 1955 it was incorporated in the portfolios of each salesman so that the salesman would have the statement of policy for ready reference, although by this time it did not carry with it the threat of immediate dismissal. This policy was not transmitted to the Texas dealers except on occasion, and then orally, by salesmen or other personnel, and it was only after the dealer sold a sufficient amount of lubricating oil to warrant the payment of a discount or rebate that he was informed by letter that he was free to select any brand of TBA merchandise which he might elect and that the only interest Texas had was to help him market that merchandise at a profit so that his business would be more successful in every way.

20. The dealer witnesses called by Texas all testified that they were familiar with, and knew, the Texas policy with reference to the sale of TBA and considered themselves independent businessmen, free to purchase TBA as they might see fit. Many testified that when they were interviewed as prospective dealers they were told that they could purchase TBA wherever they might wish. The ex-dealers called in support of the charges of the complaint testified that when they were interviewed as prospective dealers they were told that they could purchase either Goodrich or Firestone with no indication that they might purchase from other suppliers. It would be unusual to expect that Texas salesmen would vigorously insist to a dealer that he had a right to buy wherever he might wish when the salesman's compensation was based, in part, upon commission on sales of sponsored TBA.

21. After giving consideration to the testimony of the various witnesses appearing in this proceeding and giving consideration to their demeanor and credibility, it is the opinion of the hearing examiner that the record in this proceeding as a whole indicates that coercion and pressure was, in fact, brought on a substantial number of dealers to induce them to purchase sponsored TBA and to discontinue the purchase or display of non-sponsored items.

(1877) 22. The use of credit cards in connection with the sale of Goodrich TBA was instituted by The Texas Company in March 1940. This was discontinued as of May 6, 1942, due to credit regulations issued by the Federal Reserve Board. The use of credit cards was again resumed on January 1, 1948. From that date until January 1, 1955, there were no restrictions with regard to brands of TBA that might be purchased on credit, but commencing January 1, 1955, Texas specifically restricted the use of its credit

card in connection with TBA purchases, to Goodrich and Firestone products. It was on this date that Texas instituted the practices of selling TBA products on credit cards on a deferred payment basis, allowing three months for payment of purchases of $30.00 or more, and six months for purchases of $50.00 or more, with no service or carrying charge being made. The record shows that Texas dealers have from time to time continued to charge non-sponsored TBA items on the regular monthly settlement basis. It is logical for Texas to limit sales of TBA on deferred payment, without interest or carrying charge, to those products on which Texas receives a commission, as this would, in part, indemnify it for the expense in connection with the deferred payment plan.

SUPPLEMENTAL FINDINGS

23. Goodrich manufactures tires and tubes of all kinds, sizes, varieties and price. It buys and resells batteries, which carry the "B. F. Goodrich" brand and which similarly comprise a variety of lines of differing prices, sizes and quality. B. F. Goodrich sells a full line of automotive accessories, including fan belts, radiator hose and other rubber products of its own manufacture and non-rubber accessories which it buys and resells under the nationally advertised brand names of the manufacturers of those products.

24. Goodrich operates five tire manufacturing plants across the country located in Ohio, Pennsylvania, Alabama, Oklahoma and California. Its tires are shipped from these plants to fifteen company-operated merchandising warehouses (also known as master warehouses) in major metropolitan centers over the nation. These plants and master warehouses in turn ship tires to thirty-one Goodrich dis-

trict office-warehouses all around the country. The manufacturers from which B. F. Goodrich purchases its batteries have plants strategically located over the country from which they ship (1878) to the same master and district warehouses. The accessories B. F. Goodrich purchases from other national brand manufacturers also go to the master and district warehouses.

25. Goodrich sells tires, batteries, accessories and supplies to specialized tire dealers, new car dealers, garages, service stations and in every channel of trade where tires are sold. In addition to these independent distributors and dealers, it also sells through its own company-operated B. F. Goodrich Stores. Some of these independent distributors and The B. F. Goodrich Stores, located in the various states of the United States, are supplied primarily from the master warehouses and district office-warehouses or occasionally from the manufacturing plants of Goodrich or the other concerns from which it purchases the batteries and accessories which it does not manufacture itself.

26. Goodrich has sales commission arrangements with Texas, Continental Oil Company (hereinafter "Conoco"), The Ohio Oil Company (hereinafter "Ohio-Marathon"), Shell-American Petroleum Company (hereinafter "Shell-American"), Jenney Manufacturing Company (hereinafter "Jenney") and Emblem Oil Company (hereinafter "Emblem"). There are written contracts with Texas, Conoco, and Ohio-Marathon but there are no formal contracts with the other three oil companies, which are smaller, local concerns generally with only service station customers selling at the retail level but without wholesale outlets such as consignees, jobbers or distributors. With those exceptions, the terms and conditions of the arrangements with Shell-American, Jenney and Emblem, and their responsibilities

thereunder, are the same as those of the oil companies which are parties to formal contracts, and their outlets are similarly served by Goodrich.

27. The typical service station requires unique services not required by the large-volume tire dealers directly served by Goodrich and others. Because of the comparatively small volume of its TBA business, limited capital, and restricted storage space in relation to the multiplicity of types, sizes, qualities and prices of tires and batteries now in demand, the service station generally stocks few if any of these items in the TBA line and consequently requires a fully-stocked source of supply close at hand and prepared to make quick, small deliveries of items already ordered by a customer of the station.

(1879) 28. Goodrich satisfies the need of service stations for quick delivery through numerous supply points located across the country. Generally these supply points are independent distributors, but in a few instances where independent distributors with the necessary facilities are not available, B. F. Goodrich Stores handle supply point distribution. Whenever Goodrich enters into a sales agreement or starts selling to an outlet of an oil company with which it has a sales commission arrangement, Goodrich usually designates a supply point nearest to the service station. The service station operator is not limited to the designated supply point, but is free to deal with any Goodrich supply point he may prefer.

29. These independent distributors have played an increasingly important role in the operation of B. F. Goodrich's sales commission programs with the various contracting oil companies. Of the total number of outlets of all the contracting oil companies on which Goodrich paid

commissions, the percentage supplied by independent distributors from 1950 through mid-1956 was as follows:

As Of	*Total Outlets On Which Commission Was Paid*	*Supplied By Independent Distributors*	*Percentage By Independent Distributors*
12/31/50	2040	442	22%
12/31/51	2469	820	33%
12/31/52	4075	1876	46%
12/31/53	5065	2486	49%
12/31/54	6065	3127	52%
12/31/55	7042	3908	55%

The same trend is even more pronounced for Texas outlets, for which figures are available for two additional years:

As Of	*Total Outlets On Which Commission Was Paid*	*Supplied By Independent Distributors*	*Percentage By Independent Distributors*
12/31/50	1974	438	22%
12/31/51	2245	743	33%
12/31/52	2763	1228	44%
12/31/53	3189	1664	52%
12/31/54	3864	2172	56%
12/31/55	4444	2636	59%
12/31/56	4935	2954	60%
12/31/57	5059	3156	62%

(1880) 30. In addition to Texaco, Goodrich also entered into a sales commission contract with Continental Oil Company (Conoco) in 1952. From 1952 to the end of 1955, the number of Conoco leased stations increased from 1,138 to 1,745.[1] Sales by Goodrich to Continental were sub-

1. CX 215

stantial as is indicated by the following tabulation of total tire and tube sales for the years 1954-1957:

1954	$5,328,882
1955	6,413,852
1956	5,911,274
1957	5,613,348 (RX 83)

31. In the year 1955, there was a total of 182,097 service stations in the United States.[2] In the same year, Texaco had 13,366 (C) stations and 16,806 (D) stations, for a total of 30,172 stations which would be subject to the sales commission contract. Taking the (C) and (D) stations only of Texaco, this would amount to 16.5% of the service stations in the United States. The service stations controlled by the additional oil companies having sales commission contracts with Goodrich during the years 1953-1955 were as follows:

	12-31-53	*12-31-54*	*12-31-55*
Conoco	1061	1272	1508
Shell	53	66	804
Jenney Mfg.	138	188	201
Ohio Oil	594	666	60
Emblem	30	9	25
	1876	2201	2598[3]

32. A second method of distributing TBA to oil companies was the purchase resale plan. This was generally limited to tires and tubes and usually involved the supplying of private brand tires. The following oil companies market private brand tires under this plan:

2. RX 86F

3. CX 136

Oil Company	*Tire Supplier*	*Tire Brand*
American Oil Company	Mansfield Tire & Rubber Co.	Amoco
Cities Service Oil Co. (Del.)	U. S. Rubber Co.	Cities Service
Cities Service Oil Co. (Pa.) (1881)	Dayton Tire Co.	Cities Service
Billups Petroleum Co.	U. S. Rubber Co.	Billups
Esso Standard Oil Co.	U. S. Rubber Co.	Atlas
Humble Oil & Refining Co.	General Tire Co.	Atlas
Standard Oil Co. of Calif.	Mansfield Tire & Rubber Co. U. S. Rubber Co.	Atlas
Standard Oil Co. (Ind.)	U. S. Rubber Co.	Atlas
Standard Oil Co. (Ky.)	U. S. Rubber Co.	Atlas
Standard Oil Co. (Ohio)	Cooper Tire & Rubber Co. Seiberling Tire Co.	Atlas
General Petroleum Corp.	Goodyear	Mobil
Magnolia Petroleum Corp.	Goodyear	Mobil
Socony-Mobil Oil Co.	Goodyear	Mobil
Phillips Petroleum Co.	Lee Rubber & Tire Corp.	Phillips
Pure Oil Co.	Mansfield Tire & Rubber Co.	Pure
Tidewater Oil Co.	U. S. Rubber Co.	Flying "A"
Blakely Oil Co.	Mansfield Tire & Rubber Co. The B. F. Goodrich Co.	Pharis Brunswick
Century Oil Co.	U. S. Rubber Co.	Fisk

33. During the course of the hearings upon remand, the respondent, The B. F. Goodrich Company offered in evidence copies of Crowell-Collier Automotive Survey for the years 1946 through 1955, which said respondent relied upon and utilized in the course of its business. This survey shows the percentage of replacement tire purchases by automobile owners from the companies listed during the period of time set out as follows:

REPLACEMENT TIRE PURCHASES BY AUTOMOBILE OWNERS

	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955
Goodyear	21.3%	20%	18.2%	20%	21%	21%	19.5%	18.3%	21.4%	20.4%
Firestone	19.5%	20%	17.6%	18%	18%	16%	16.9%	16.8%	15.3%	17.6%
U. S.	9.4%	9%	8.7%	9%	8%	10%	8.9%	8.0%	7.4%	8.2%
Goodrich	10.7%	10%	8.9%	8%	10%	9%	10.2%	7.2%	8.9%	7.0%
Sears	5.8%	6%	6.6%	8%	9%	8%	10.8%	11.7%	10.7%	12.1%
Atlas	5.0%	7%	7.5%	7%	6%	6%	6.1%	6.3%	6.0%	5.6%
General	3.7%	3%	2.3%	2%	2%	2%	2.9%	3.0%	2.4%	2.6%
Riverside	2.9%	3%	4.5%	4%	5%	4%	3.8%	4.5%	4.2%	3.9%
Lee	2.4%	2%	3.2%	2%	2%	3%	2.0%	2.7%	2.7%	1.9%
Springfield	2.1%	1%	1.8%	2%	2%	2%	2.0%	1.6%	1.2%	1.0%
Ford	4.4%									
Others	16.6%	12%	14.1%	16%	9%	10%	10.4%	11.0%	9.6%	10.1%
Davis		3%	2.5%	2%	2%	2%	2.2%	3.1%	2.2%	2.2%
Fisk		2%	1.7%	2%	2%	1%	0.5%	0.5%	1.0%	0.9%
Seiberling		1%	1.4%		2%	2%	1.0%	1.6%	1.5%	1.2%
Dunlop		1%	1.0%		1%	2%	1.4%	0.7%	1.6%	0.8%
Mobil					1%	2%	1.4%	0.9%	1.6%	1.1%
Armstrong								1.2%	1.0%	2.0%
Gulf								0.9%	1.3%	1.4%

(1883) 34. There are at least 18 manufacturers of automotive tires in the United States, ten of which also offer lines of batteries and accessories. Those selling batteries and accessories in addition to producing and selling tires are:

(1) The Goodyear Tire & Rubber Company

(2) The Firestone Tire & Rubber Company

(3) United States Rubber Company

(4) The B. F. Goodrich Company

(5) Cooper Tire & Rubber Co.

(6) Dunlop Rubber Co.

(7) Gates Rubber Co.

(8) General Tire & Rubber Co.

(9) Lee Rubber & Tire Corp.

(10) Seiberling Rubber Co.

Those companies which produce and sell only tires are:

(11) Armstrong Rubber Co.

(12) Corduroy Rubber Co.

(13) Dayton Rubber Co.

(14) Denman Rubber Manufacturing Co.

(15) Mansfield Tire & Rubber Co.

(16) McCreary Tire & Rubber Co.

(17) Mohawk Rubber Co.

(18) Schenuit Rubber Co.

CONCLUSIONS

1. Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA, even without the use of coercive tactics. Such economic power exists independent of any particular method of distributing TBA which Texaco might use.

2. For the purpose of inducing the purchase of sponsored TBA by Texaco dealers, Texas representatives have, in fact, attempted to and did coerce and force Texaco dealers to purchase substantial quantities of Goodrich and Firestone TBA and respondent, Goodrich, had the benefits of such practices. These acts of coercion consisted of demands that dealers discontinue the purchase or display of non-sponsored TBA under the threats of lease cancellation or other coercive acts. Such coercion need not be 100% effective in order to constitute an unfair method of competition or an unfair act or practice in violation of the Federal Trade Commission Act.

(1884) 3. The hearing examiner is bound by the decision of the Commission and the only issue left for consideration of the hearing examiner under the terms of the Commission's opinion and order of remand, is the competitive effects of the sales commission plan used by Goodrich with The Texas Company, and whether Texaco's exercise of such economic power in favor of Goodrich and Firestone under their sales commission contracts have sufficient competitive effect to constitute an unfair method of competition or an unfair act or practice.

4. The use of the sales commission method of distribution by Goodrich was designed to take advantage of the

economic control which Texaco had over its dealers, and by such use, Goodrich was able to obtain an unfair advantage over its competitors in selling to Texaco stations and in addition, aided and abetted Texaco in removing from the open market a substantial number of new and established Texaco dealers by causing them to purchase Goodrich TBA exclusively or in substantial quantities, and thereby excluding competitors of Goodrich who might otherwise have been able to sell their TBA to a substantial number of such Texaco dealers.

5. Representatives of practically all of the competitors of Goodrich in the selected trade areas in which testimony was taken, testified generally that they had difficulty in selling TBA to Texaco stations and testified specifically as to the reasons given by certain Texaco dealers for not buying or selling their TBA items. This testimony shows that Texaco dealers did not purchase a substantial amount of competing non-sponsored TBA because of their feeling or understanding, that they were required to purchase Goodrich or Firestone TBA.

6. Informing new dealers of the commission arrangement with Goodrich and Firestone as to TBA and the recommendation of these companies by Texaco, carried with it an implication that Texaco dealers were required to purchase their TBA from either Goodrich or Firestone and resulted in the exclusion of TBA of the competitors of these companies.

7. Analysis of the tabulation of replacement tire purchases set out in supplemental findings, show that the market share of Goodrich in the sale of replacement tires during the years 1946 to 1955 has varied from year to year (1885) with a high of 10.7% in 1946 and a low of 7.0% in

1955, and averaging approximately 9% for the entire period. Respondent maintains that those percentages indicate no injury to competition. In considering this contention, it must be considered that the basis upon which these percentages were figured has increased considerably from 1946 to 1955. For example, during approximately the same period 1948 to 1955, passenger car registration increased 56.3%,[4] which indicates a much larger market for replacement tires in 1955, and also indicates a possible doubling of gross income during that period by Goodrich. The hearing examiner is of the opinion that the percentages shown in said tabulation fully complies with the requirement of substantiality. The effect upon competition of the Goodrich sales commission contracts is greatly augmented by the cumulative effects of the sales commission contracts of Firestone, Goodyear and U. S. Rubber who use the sales commission plan of distribution extensively. These three rubber companies together with Goodrich are known as the "big four" and account for more than 50% of the tire sales in the replacement market.

8. The above share of the market percentages are not controlling on the question of injury to competition, but of more importance, is the fact that the sales of Goodrich to all classes of accounts of Texaco increased from $12,746,283 in 1952 to $18,923,649 in 1956, and the payments of commission by Goodrich to The Texas Company on the sales commission contract, increased from $1,090,583 in 1952 to $1,736,811 in 1956.

9. Subsequent to the issuance of the initial decision in this proceeding, the U. S. Court of Appeals on July 11, 1960, issued its opinion in *S. Kriete Osborn* v. *Sinclair Re-*

4. RX 55(b)

fining Company, 286 F(2d) 832. The facts in this case were substantially the same as in the present case. Goodyear had executed a sales commission agreement with Sinclair similar in all respects to the Goodrich agreement with Texaco. The contract of Sinclair with its dealers was similar to the Texaco dealers agreement, and the general method of doing business was substantially the same. Based upon these similar facts, the Court held that the agreement betwen Sinclair and its dealers constituted a tying arrangement which affected a substantial part of commerce, solely for Sinclair's economic benefit and was unjustified by the nature of the products. Referring to this situation, the Court in its opinion said:

> (1886) "The perniciousness of the imposed tie-in is aggravated by the fact that the defendant is not even in the business of selling the tied products, but is employing its economic power in the gasoline industry to force his dealers to do business with a supplier in another industry under an arrangement that yields the defendant an extraneous revenue. The defendant in this case goes a step further than the supplier in the usual tie-in case, for here the tied product is not even handled or sold by the defendant, but it farms out to another, for a price, its coercive economic power."

Even if it be considered that the facts in this case are not sufficient to constitute a tying contract under the terms of the Clayton Act, it must nevertheless be concluded that the facts in this case are contrary to the spirit of the Clayton Act and as such, constitute a violation of the Federal Trade Commission Act. A tying agreement is not required to be 100% effective to constitute a violation of the Clayton Act and the Federal Trade Commission Act. The participation of Goodrich in these practices by means of the sales

commission contract, gives Goodrich an unfair competitive advantage over its smaller competitors in the sale of TBA products to Texaco outlets and other oil company outlets.

10. The use of the sales commission plan of distribution of TBA by the respondents, The Texas Company and The B. F. Goodrich Company as herein found, has a tendency and capacity to restrict, restrain or lessen competition in the sale of TBA products and constitutes an unfair method of competition and an unfair act and practice in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

(1887)

ORDER

IT IS ORDERED that respondent, The Texas Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device in connection with the promotion, offering for sale, or sale and distribution of tires, inner tubes, batteries, and automotive accessories and supplies (hereinafter referred to as "TBA products") in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Entering into or continuing in operation or effect any contract, agreement or combination, express or implied, with The B. F. Goodrich Company, or with any other rubber company or tire manufacturer, or any other supplier of tires, batteries, or accessories, whereby The Texas Company receives anything of value in connection with the sale of TBA products to any wholesaler or retailer of Texas petroleum products by any marketer or distributor of TBA products other than The Texas Company;

2. Accepting or receiving anything of value from any manufacturer, distributor, wholesaler, or other vendor of TBA products, for acting as (1888) sales agent or for otherwise sponsoring, recommending, urging, inducing, or promoting the sale of TBA products, directly or indirectly, by any such vendor to any wholesaler or retailer of The Texas Company petroleum products;

3. Using or attempting to use any contractual or other device, such as, but not limited to, agreements, leases, training programs, promotions, dealer meetings, dealer discussions, service station identification, credit cards, and financial loans, to sponsor, recommend, urge, induce, or otherwise promote the sale of TBA products by any distributor or marketer of such products other than The Texas Company to or through any wholesaler or retailer of The Texas Company petroleum products;

4. Employing any method of inspecting, reporting, or surveillance or using or attempting to use, in any manner, its relationship with Texas outlets to sponsor, recommend, urge, induce, or otherwise promote the sale of any specified brand or brands of TBA products by any distributor or marketer of such products other than (1889) The Texas Company to any wholesaler or retailer of Texas petroleum products;

5. Intimidating or coercing or attempting to intimidate or coerce any wholesaler or retailer of The Texas Company petroleum products to purchase any brand or brands of TBA products;

6. Preventing or attempting to prevent any wholesaler or retailer of The Texas Company petroleum

products from purchasing and reselling, merchandising, or displaying TBA products of his own independent choice.

IT IS FURTHER ORDERED that respondent, The B. F. Goodrich Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the promotion, offering for sale or sale and distribution of tires, inner tubes, batteries and automotive accessories and supplies (hereinafter referred to as "TBA products") in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Entering into or continuing in operation or effect any contract, agreement or combination, express or implied, with The Texas Company or with any other marketing oil company whereby (1890) The B. F. Goodrich Company, directly or indirectly, pays or contributes anything of value to any such marketing oil company in connection with the sale of TBA products by The B. F. Goodrich Company or any distributor of Goodrich products to any wholesaler or retailer of petroleum products of such marketing oil company;

2. Paying, granting or allowing, or offering to pay, grant or allow, anything of value to The Texas Company or to any other marketing oil company for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing or promoting the sale of TBA products, directly or indirectly, by The B. F. Goodrich Company or any distributor of Goodrich products to any wholesaler or retailer

of petroleum products of such marketing oil company;

3. Reporting or participating in the reporting to The Texas Company or to any other marketing oil company concerning sales of TBA products to (1891) wholesalers or retailers of petroleum products, individually or by groups, of any such marketing oil company.

EARL J. KOLB,
Hearing Examiner.

September 24, 1962.

Petition of The B. F. Goodrich Company for Review

(October 12, 1962)

(1892)

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

[SAME TITLE]

The B. F. Goodrich Company, a co-respondent in the above-entitled proceeding, pursuant to Rule §4.20 of the Commission's Rules of Practice, hereby petitions for review of the second Initial Decision of Hearing Examiner Earl J. Kolb, filed on September 24, 1962 and served upon respondent on September 27, 1962. In support of its petition respondent respectfully shows the following:

• • •

The proceeding was commenced in 1956 by issuance of a complaint charging that certain sales commission contracts of long standing between Goodrich and The Texas Company (now Texaco) constitute an unfair method of competition. These challenged contracts provide for the payment by Goodrich to Texaco (1893) of sales commissions of varying amounts upon the sales of Goodrich tires, batteries and accessories ("TBA") to Texaco outlets, in return for a variety of valuable services rendered by Texaco in connection with such sales.

After an interlocutory appeal held prior to the hearings in this case, the Commission directed that evidence be taken concerning the "competitive effect" of the challenged contracts. At the hearings the bulk of the extensive evidence admitted dealt with the competitive effect of these contracts. On October 23, 1959, after hearing this evidence, the Examiner rendered his first Initial Decision, holding that the challenged contracts did not violate Section 5 of

the Federal Trade Commission Act and dismissing the case against respondent Goodrich.[1]

On appeal the Commission concluded once again that the crucial question was the competitive effect of the Goodrich/Texaco sales commission contracts. It further concluded that the record before it did not contain sufficient evidence to determine whether the effects of the contracts were adverse or not. The case was remanded to the Examiner "for the reception of such further (1894) evidence concerning the competitive effects of the respondents' practices as may be offered * * *". After receipt of such evidence, the Examiner was directed to "indicate any changes he may wish to make in his initial decision *in the light thereof*" [emphasis supplied]. Implicit in this decision was a determination that the evidence then before the Commission would not support a finding of violation; substantial additional evidence tending to show an adverse effect on competition would have to be brought forward before the sales commission contracts could be stricken down as illegal.

At the remand hearings, counsel in support of the complaint was unable to come forward with any competent evidence demonstrating adverse competitive effects.[2] The

1. The Examiner did enter an Order directing respondent Texaco to cease and desist from alleged coercive practices. This Order did not, however, affect the sales commission contracts themselves.

2. Without relating the history of the lengthy judicial proceedings which preceded the remand hearings, it should be pointed out that both respondents vigorously contended, and still contend, that the Commission's remand order itself was unlawful. It was made without any request by any party, without any showing or claim by anyone that there were changed conditions of fact or law, any newly discovered evidence or, indeed, any additional evidence whatsoever. The strength of respondent's argument is demonstrated by the fact that the only material added to the record at the remand hearings was material from the record in another case which the Examiner officially noticed. Assuming *arguendo* that such material is probative at all, or subject to official notice, the Commission could have just as easily noticed it when it rendered its first decision.

* * *

only material added to the record at the remand hearings were three tabulations set forth in paragraphs 32 through 34 of the second Initial (1895) Decision (pp. 18-21). The first tabulation (pp. 18-19) is simply a list of the oil companies which market private brand *tires* under a *purchase and resale plan.* Such a list obviously casts no light on the competitive effects of a *sales commission* arrangement between respondents relating to *tires, batteries and accessories.*

The second tabulation (p. 20) represents estimates of replacement tire purchases by automobile owners for the years 1946 through 1955. This tabulation, if it indicates anything at all, demonstrates that the Goodrich/Texaco contracts have not enhanced Goodrich's market position. Goodrich's share of the market has fallen from 10.7% in 1946 to 7.0% in 1955. Moreover, the market shares of each of the tire manufacturers who are larger than Goodrich, and who also have sales commission plans, have similarly declined during this period of time. Obviously, no finding of adverse competitive effect can be based on such a tabulation.

The third tabulation (p. 21) is simply a list of ten companies who are stated to be sellers of tires, batteries and accessories, and a further list of eight companies who are said to sell tires alone. It is difficult to see what bearing these lists have on the competitive effects of the Goodrich/Texaco sales commission plans. It is, perhaps, of some interest to note that the Examiner found (p. 20) that seven of the ten companies said to offer a full line of TBA (Goodyear, Firestone, U.S., Goodrich, Dunlop, General and Lee) declined in market position (1896) between 1946 and 1955, while only one (Seiberling) moved up; Cooper and Gates are apparently too small to be separately listed. The only company in the group selling tires alone which is large enough to be separately listed (Armstrong) apparently is improving its market position.

• • •

In the light of these facts, and without prejudice to its contention that the case should have been dismissed rather than remanded in the first place, respondent submits that the question raised on this appeal is as follows:

> *Was the additional material placed in the record on remand sufficient to justify a finding of adverse competitive effect, and the entry of a sweeping Order, in view of the Commission's previous determination that the rest of the record would not support such a finding?*

Respondent further submits that the answer to this question obviously is "No."

It is equally clear under the language of the Remand Order that this appeal should not constitute a reargument on evidence which this Commission has already reviewed once and found insufficient to support an Order. Respondents did not reargue the original record before the Examiner. Counsel in support of the complaint did so reargue, however, and the bulk of the "Supplemental Findings" in the second Initial Decision are culled from the original record, not the record on remand. Therefore, (1897) by stating the question on appeal in the manner clearly contemplated by the Commission's Remand Order, respondent does not mean to waive its right to refer to the original record in its briefs and argument on appeal.

* * *

Review of the Hearing Examiner's second Initial Decision is compelled by the public interest. The Examiner has entered a sweeping Order which would prohibit Goodrich from entering into sales commission arrangements with Texaco or any other marketing oil company. Yet, as the Examiner recognized, valuable services are rendered to service station dealers under such sales commission

contracts (pp. 7, 16). Moreover, as the Examiner recognized, and explicitly found, independent distributors are playing an increasingly important role in the operation of such sales commission contracts (p. 17). The outcome of this proceeding is of critical importance, not only to respondents Goodrich and Texaco, but also to thousands of independent dealers and distributors who would be adversely affected by the decision of the Examiner.

October 10, 1962

Respectfully submitted,

WHITE & CASE
By Edgar E. Barton
Macdonald Flinn
Thomas B. Leary
Attorneys for respondent
The B. F. Goodrich Company

Petition of Texaco Inc. for Review

(October 12, 1962)

(1898)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

Petitioner Texaco Inc. (formerly known as The Texas Company), without prejudice to its contentions regarding the illegality of the remand order dated March 9, 1961, heretofore and now asserted,[1] and without prejudice to its contention in Question 1, *infra*, that the Commission lacks the power to enter any order except an order of dismissal,[2] nevertheless in accordance with Rule 4.20 of the Commission's Rules of Practice, hereby petitions the Commission for a review of the Initial Decision of the Hearing Examiner filed on September 24, 1962 and served on September 27, 1962.

(1899a)

1. Petitioner Texaco Inc. contends that the remand order of the Commission dated March 9, 1961, was improperly, invalidly and unlawfully made; that the Commission does not have and the Hearing Examiner did not have jurisdiction, power or authority under said order to retry issues already disposed of, readjudicate said issues or undertake any other action under said remand order and that such action violates the Administrative Procedure Act and deprives petitioner of property without due process of law in violation of the Constitution of the United States.

2. Question 1, *infra*, relates to statements contained in a Commission press release entitled "Remarks Before National Congress of Petroleum Retailers, Inc., Cosmopolitan Hotel, Denver, Colorado, July 25, 1961, by Hon. Paul Rand Dixon, Chairman of the Federal Trade Commission" in which the Chairman stated that the practices of the type challenged in this proceeding violated the law. The press release reads, in part, as follows: "We at the Commission are well aware of the practices * * *. You know the practices * * * overriding commissions on TBA. You know the companies * * * Texas * * * Goodrich, and Firestone."

The Facts

Investigation by the Commission leading to the issuance of the complaint in the instant proceeding was commenced in 1952. In January, 1956, a complaint was brought under Section 5 of the Federal Trade Commission Act alleging that certain sales commission contracts between Texaco and Goodrich were unlawful. The challenged contracts call for the payment of a sales commission by Goodrich to Texaco on the sale of Goodrich tires, batteries and accessories ("TBA") to wholesale and retail outlets which sell Texaco's brand of petroleum products. In the course of the pretrial proceedings, an interlocutory appeal to the Commission resulted in a directive that evidence be taken concerning the "competitive effects" of the challenged contracts.

Commencing in 1956, extensive hearings took place before a duly designated Hearing Examiner. The most substantial part of the voluminous evidence admitted dealt with the general issue of competitive effects of the challenged contractual arrangements. During the hearings, counsel in support of the complaint was given the opportunity to adduce all evidence available to him and to the Commission relating to the issue of competitive effect.[3] The hearings terminated in December, 1958.

(1899b) On October 23, 1959, the Hearing Examiner, without having reopened the case or having been requested to do so by any party, rendered his initial decison. The Hearing Examiner found that there was some evidence in the record indicating that Texaco had coerced some of its dealers with respect to the purchase of TBA items and embodied in his decision an order compelling Texaco to cease and desist from alleged coercive practices. The

3. Counsel for the Commission so stipulated. See the Stipulation of Facts dated April 27, 1962, Civil Action No. 2219-61, United States District Court for the District of Columbia.

Hearing Examiner further found that the challenged contracts did not violate Section 5 of the Federal Trade Commission Act and that the method of marketing TBA envisaged by said contracts did not violate the Act. Accordingly, he did not order petitioners to cease and desist from engaging in the TBA business under the sales commission type of arrangement. Also, he dismissed the complaint against The B. F. Goodrich Company.

Petitioner Texaco and counsel in support of the complaint appealed and the Commission heard full arguments on both appeals on June 20, 1960. After the oral arguments, without any request by any party to this proceeding and without any claim by any party that there were changed conditions of fact or law or that there was any newly discovered evidence or, indeed, any additional evidence whatsoever, the Commission on March 9, 1961, issued an order remanding the case to the Hearing Examiner for the reception of "further evidence" (1900) concerning the "competitive effects" of the challenged contracts.

As soon as attempts were made to implement the remand order of March 9, 1961, Texaco and Goodrich commenced an action in the District Court for the District of Columbia, seeking a declaratory judgment that the remand was illegal and an injunction against implementation of the order of remand. The District Court refused to grant immediate injunctive relief. However, the District Court ordered that the proceedings on remand were to be conducted "in such a manner that [petitioner] shall have equal time and opportunity with Commission's Counsel in connection with preparing and adducing further evidence, if any * * *." Texaco and Goodrich thereupon attempted to obtain immediate injunctive relief from the United States Court of Appeals for the District of Columbia and from the United States Supreme Court. On June 22, 1962, the Court of Appeals, after counsel for the Commission had

informed the Court that the Hearing Examiner had limited the Commission to three days within which to present additional evidence, denied the petition for an injunction. Mr. Justice Black denied injunctive relief on July 10, 1962.

On June 27, 1962, before the Supreme Court had ruled on the petition for injunctive relief, the Hearing Examiner ordered that hearings on the remand were to commence July 16, 1962 "and to proceed by consecutive hearings until completion (1901) of testimony." On July 2, 1962, petitioners filed a motion asking the Hearing Examiner to allow petitioners pretrial discovery regarding the nature of the evidence which counsel in support of the complaint proposed to introduce. In the same motion, petitioners requested the Hearing Examiner to allow "a sufficient interval of time between the closing of the case by counsel supporting the complaint and the opening of respondents' evidence giving respondents adequate time and opportunity * * * to prepare their own evidence to meet whatever evidence may be adduced by counsel supporting the complaint." The Hearing Examiner denied this motion on July 11, 1962. On July 12, 1962, petitioners received a copy of a motion by counsel in support of the complaint asking the Hearing Examiner to take official notice of certain matters from another case (the *Shell-Firestone* case, Docket 6487).

The remand hearings commenced on July 1962. No admissible evidence was adduced by counsel in support of the complaint at these hearings. Instead, counsel asked the Hearing Examiner to officially notice certain matters from the *Shell-Firestone* case (Docket 6487) and the Examiner, over the objection of petitioner, announced that he would do so. On July 19, 1962, counsel in support of the complaint having rested, petitioner Texaco Inc. moved the Hearing Examiner for the issuance (1902) of subpoenas duces tecum directed to seventeen named companies requir-

ing them to produce records relating to matters which had been officially noticed by the Hearing Examiner. Petitioner Texaco Inc. also requested the Hearing Examiner to issue twenty subpoenas ad testificandum in blank with the representation that the names of the witnesses would be filled in the next day. Issuance of these subpoenas was sought to enable petitioner to disprove and rebut the matters which had been officially noticed over its objection. The Hearing Examiner refused to issue any subpoenas and petitioner, having thereby been deprived of an opportunity to disprove and to rebut the matters which had been officially noticed, rested.

On September 24, 1962, following the close of the remand proceedings, the Hearing Examiner filed his initial decision in which he reaffirmed his earlier findings regarding coercion of dealers, reversed his earlier findings by holding that the use of the challenged contracts violated Section 5 of the Federal Trade Commission Act, and issued a sweeping cease and desist order.

Questions Presented for Review

1. In view of the public utterance made by the Chairman of the Commission on July 25, 1961, would it be error for the Commission to participate further in the review of this (1903) proceeding, including the instant petition, other than to dismiss the complaint?

2. Does an agency such as the Federal Trade Commission, after full trial and a finding by it that the evidence does not show a violation of law, have the power *sua sponte* to reopen and remand the case for the taking of further evidence without any claim or showing that there is any such evidence whatsoever, to say nothing of evidence newly discovered or inadvertently omitted?

3. Did the remand order and/or its implementation in this case violate the Administrative Procedure Act and/or deprive petitioner of property without due process of law?

4. Was it erroneous for the Hearing Examiner to take official notice of matters from the opinion of the Commission in *Firestone Tire and Rubber Company and Shell Oil Company* (Docket 6487), a proceeding to which petitioner was not a party?

5. Was it an error to receive the material offered by Goodrich (see finding No. 33), without any foundation testimony and over the objection of petitioner, on the theory that it could be officially noticed?

6. Will the officially noticed matters from the opinion of the Commission in Docket 6487 support findings and conclusions adverse to petitioner, particularly where such matters were (1904) before the Commission and were included in its decision in Docket 6487 on the very day that it ordered the remand in this proceeding?

7. Does the record of the remand hearings, taken as a whole contain the requisite evidence of competitive effects lacking from the record of the prior hearings so that the record of the remand hearings provides the missing substantial evidence which earlier barred the Commission from finding the challenged arrangement unlawful?[4]

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4. Findings 23 through 34 in the Initial Decision dated September 24, 1962 are labeled "Supplemental Findings." This is misleading for only findings 32, 33 and 34 relate to the proceedings on the remand. All of the other findings are a rehash of the prior record which, the Commission found, was insufficient to establish a violation of law.

Petition of Texaco Inc. for Review

8. Did the Hearing Examiner err in refusing to issue the subpoenas sought by petitioner to enable it to disprove and rebut the matters which had been officially noticed?

9. Was it erroneous for the Hearing Examiner to deny petitioner adequate time to prepare and present its evidence at the remand hearings?

10. Was it erroneous for the Hearing Examiner to make findings and conclusions adverse to the petitioner which were not based on substantial evidence or which were contrary to the evidence?

11. Is the Hearing Examiner's order too broad?

(1905)

Reasons Why Review
Is in the Public Interest

Administrative adjudicative proceedings must be conducted to afford respondents therein a fair hearing. Petitioner contends that this fundamental precept has been ignored and violated in all of the proceedings which have been undertaken by the Commission in this matter from and after the date on which it ordered the remand. The public interest demands an impartial review of the many substantial questions presented herein.

Respectfully submitted,

Amzy B. Steed
James O. Sullivan
Royall, Koegel, Harris & Caskey
By Frederick W. P. Lorenzen
Attorneys for Petitioner
Texaco Inc.

Dated: October 12, 1962

Order Granting Petitions For Review

(November 13, 1962)

(1907)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Commissioners:

Paul Rand Dixon, Chairman
Sigurd Anderson
Philip Elman
Everette MacIntyre
A. Leon Higginbotham, Jr.

[SAME TITLE]

Respondents having filed on October 12, 1962, petitions for review of the initial decision of the hearing examiner in this proceeding pursuant to §4.20 of the Commission's Rules of Practice, and counsel supporting the complaint having filed an answer in which he does not oppose the granting of said petitions; and

The Commission having determined that said petitions should be granted:

IT IS ORDERED that respondents' petitions for review of the hearing examiner's initial decision be, and they hereby are, granted.

By the Commission.

Joseph W. Shea,
Secretary.

Issued: November 13, 1962

(1985)

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

IN THE MATTER *of* THE B. F. GOODRICH COMPANY *and* THE TEXAS COMPANY, Corporations.	Docket No. 6485

EXCEPTIONS FILED PURSUANT TO RULE 4.21 ON BEHALF OF TEXACO INC. (FORMERLY THE TEXAS COMPANY)

(January 8, 1963)

Texaco Inc. (hereinafter referred to as "Texaco") respectfully submits the following as its exceptions to the revised Initial Decision of the Hearing Examiner filed September 24, 1962, and to the rulings made in this proceeding.

I

EXCEPTIONS TO RULINGS

1. Texaco excepts

(a) to the failure of the Commission to dismiss the complaint upon the first appeal herein and to its issuance, instead, of the Order of March 9, 1961 (hereinafter "Remand Order") remanding this proceeding to the Hearing Examiner,

Exceptions Filed Pursuant to Rule 4.21

(b) to all proceedings had herein pursuant to such Order,

(c) to the Order of the Hearing Examiner dated June 27, 1962 (implementing such Remand Order) setting hearings on the remand to commence July 16, 1962, and

(d) to the failure of the Hearing Examiner to grant Texaco's motion made on July 16, 1962 (Tr. 4439-40)[1] to dismiss this proceeding.

(1986) The grounds are that the Federal Trade Commission did not have the power or authority to order the remand and could not do so consonant with the Administrative Procedure Act and the requirements of due process of law. Moreover, its action was arbitrary and capricious and reflected a prejudgment of the issues in this proceeding. Thus, the Hearing Examiner likewise lacked the power or authority to order, or conduct, hearings pursuant to the Remand Order, and his implementation of the Remand Order deprived Texaco of due process and its rights under the Administrative Procedure Act.

The Remand Order and the proceedings held pursuant thereto were:

(i) In contravention of Section 5(b) of the Federal Trade Commission Act, 15 U. S. C. §45(b), and of the Commission's published Rules of Practice which do not provide for any such remand, but require dismissal of the complaint when there is insufficient evidence in the record to support it and, more specifically, in contravention of Rules 3.24,

1. "Tr." is used herein as the abbreviation for the Official Transcript of the hearings. "CX" or "RX" followed by a number refers to Commission's or Respondents' exhibits, respectively. A name, such as Glenn, followed by a number, refers to the name of a witness and to the page of the transcript of the hearings on which the pertinent testimony is found.

3.27(a) and (b) and 3.21(d),[2] none of which provides for the remand procedure here utilized;

(ii) In contravention of Section 3 of the Administrative Procedure Act, 5 U. S. C. §1002, which states that "no person shall in any manner be required to resort to * * * procedure not so published" in the Federal Register;

(iii) In contravention of Sections 5(a) and (b) of the Administrative Procedure Act, 5 U. S. C. §§1004(a), (b), which require an agency to act upon notice and hearing, which was not done with respect to the Remand Order;

(iv) In contravention of Section 6(a) of the Administrative Procedure Act, 5 U. S. C. §1005(a), which requires that "every agency shall proceed with reasonable dispatch to conclude any matter presented to it," in that they unreasonably and arbitrarily delayed the disposition of this proceeding;

(v) In contravention of Texaco's rights under the Fifth Amendment of the Constitution of the United States. The Remand Order was entered without any application or showing by any party of the necessity or justification for taking any further evidence, or the existence of any further competent and material evidence, and, therefore, the (1987) Remand Order and the proceedings held pursuant thereto operated to deprive respondent of property without due process of law.

The authorities which are relied on in support of this exception are, in addition to the statutes and rules cited above, *Wong Yang Sung* v. *McGrath*, 339 U. S. 33 (1950); *Deering Milliken, Inc.* v. *Johnston*, 295 F. 2d 856 (4th Cir. 1961); *National Labor Relations Bd.* v. *National Paper Co.*, 216 F. 2d 859 (5th Cir. 1954); *National Labor Relations Bd.*

2. These citations are to the former Rules of the Commission in effect at the time of the Remand Order (16 Code of Federal Regulations).

v. *Phelps*, 136 F. 2d 562 (5th Cir. 1943); *Pinkus* v. *Reilly*, 157 F. Supp. 548 (D. N. J. 1957); *Pinkett* v. *United States*, 105 F. Supp. 67 (D. Md. 1952). See also grounds and authorities referred to in Exception 3, *infra*.

2. Texaco excepts

(a) to that particular portion of the Hearing Examiner's Order dated June 27, 1962, which set July 16, 1962 as the date for commencement of remand hearings and required consecutive hearings until completion of testimony, and

(b) to the denial by the Hearing Examiner's Order, dated July 11, 1962, of Texaco's motion, filed July 2, 1962, in which it sought pretrial disclosure of the evidence to be offered by counsel supporting the complaint and an opportunity after disclosure and after the case-in-chief, to prepare to meet evidence, if any, adduced by counsel supporting the complaint.

The grounds are that the Hearing Examiner's Orders denied Texaco a fair hearing and a fair opportunity to meet the case-in-chief, and were in violation of:

(i) Sections 7(c) and 5(a) of the Administrative Procedure Act, 5 U. S. C. §§1006(c), 1004(a);

(ii) Rules 4.14(b) and (e) of the present Rules of Practice of the Federal Trade Commission (Rules 3.16(b) and (e) of the former Rules); and

(iii) The Fifth Amendment to the Constitution of the United States.

The authorities in support of this exception are, in addition to the Constitution, statutes and rules cited above, *Morgan* v. *United States*, 304 U. S. 1 (1938); *Ohio Bell Telephone Co.* v. *Public Utilities Comm'n*, 301 U. S. 292 (1937);

Brotherhood of R. R. Trainmen v. *Swan*, 214 F. 2d 56 (7th Cir. 1954); *Radic* v. *Fullilove*, 198 F. Supp. 162 (N. D. Calif. 1961).

(1988) The action of the Examiner, furthermore, was in violation of the order of the United States District Court, made on the 19th day of June, 1962, in a proceeding brought by Texaco and Goodrich against the Federal Trade Commission, its Commissioners and the Hearing Examiner (Civil Action No. 2219-61, United States District Court for the District of Columbia), which said order provided, referring to this proceeding and remand hearing:

> "FURTHER ORDERED that any steps in said Proceeding, pursuant to said remand, shall be conducted in such a manner that the plaintiffs shall have equal time and opportunity with Commission's Counsel in connection with preparing and adducing further evidence, if any, as well as preparing any required briefs or suggested findings of fact and conclusions of law."

3. Texaco excepts

(a) to the denial by the Hearing Examiner of its motion made on July 16, 1962 to dismiss this proceeding on the ground that a public statement made by the Chairman of the Commission on or about July 25, 1961 before the National Congress of Petroleum Retailers, Inc. reflects such bias, prejudice and partiality as to oust the Commission from any further jurisdiction over this matter (Tr. 4437-40; 4498-99);

(b) to the further participation by the Commission in the review of this proceeding other than to dismiss the complaint; and

(c) to the further participation in this proceeding by Chairman Dixon and such other Commissioners as may have approved of or been affected by his remarks, and to any orders, decisions or rulings with reference to this proceeding in which he or they have participated.

The statement in question is set forth in a press release issued by the Federal Trade Commission entitled "Remarks Before National Congress of Petroleum Retailers, Inc., Cosmopolitan Hotel, Denver, Colorado, July 25, 1961, by Hon. Paul Rand Dixon, Chairman of the Federal Trade Commission." The Chairman stated that the practices of the type challenged in this proceeding violated the law. The press release reads, in part, as follows: "We at the Commission are well aware of the practices. * * * You know the practices * * * overriding commissions on TBA. You know the companies * * * Texas * * * Goodrich, and Firestone."

The grounds are that, in view of the bias and prejudice reflected in this statement, it is a denial of due process of law and a violation of the Constitution of the United States for the Commission, its (1989) Chairman and any Commissioner approving of or affected by the said statement to continue to sit in an adjudicative capacity in this proceeding. Moreover, it prejudices the public interest by undermining confidence in the administrative process to have such agency members act in a judicial capacity in matters where they are not impartial or which they have prejudged.

Due process requires that persons engaged in the decisional process be free of personal bias. An adjudicative tribunal renders its decision after—not before—hearing; and then only on the basis of the public record, after objective consideration of the facts and the law.

The authorities which support this exception, in addition to the Constitution, are Section 5 of the Administra-

tive Procedure Act, 5 U. S. C. §1004; *Neisloss* v. *Bush*, 293 F. 2d 873 (D. C. Cir. 1961); *N. Sims Organ & Co.* v. *Securities & Exchange Comm'n*, 293 F. 2d 78 (2d Cir. 1961), *cert. denied*, 368 U. S. 968 (1962); *Gilligan, Will & Co.* v. *Securities & Exchange Comm'n*, 267 F. 2d 461, 468-69 (2d Cir. 1959), *cert. denied*, 361 U. S. 896 (1959); *Trans World Airlines, Inc.* v. *Civil Aeronautics Bd.*, 254 F. 2d 90 (D. C. Cir. 1958); *Berkshire Employees Ass'n* v. *National Labor Relations Bd.*, 121 F. 2d 235, 238 (3d Cir. 1941); *National Labor Relations Bd.* v. *National Paper Co.*, 216 F. 2d 859 (5th Cir. 1954); *National Labor Relations Bd.* v. *Phelps*, 136 F. 2d 562 (5th Cir. 1943); *Sewell* v. *Federal Trade Comm'n*, 240 F. 2d 228, 233 (9th Cir. 1956), *rev'd on other grounds*, 353 U. S. 969 (1957); *Modern Methods, Inc.*, F. T. C. Dkt. 7568 (Feb. 19, 1962).

4. Texaco excepts to the ruling of the Hearing Examiner that under the doctrine of official notice he could treat findings in the Commission's opinion in *Firestone Tire & Rubber Co. and Shell Oil Co.*, Dkt. 6487, as *prima facie* proof, in this proceeding against different parties, of the truth of the matters there stated (Tr. 4485).

The grounds, including the citation of authorities in support thereof, are fully set forth in Texaco's brief filed herewith. Summarily stated, they are: Like a court taking judicial notice, an administrative agency may notice obvious and notorious facts and thereby dispense with their proof. This power, however, is a limited one and does not extend to matters not within any "rational concept of notoriety." *Ohio Bell Telephone Co.* v. *Public Utilities Comm'n*, 301 U. S. 292, 302 (1937). It cannot be pressed to the point where it nullifies the right to a hearing. *Interstate Commerce Comm'n* v. *Louisville & N. R. R.*, 227 U. S. 88 (1913); *Ohio Bell Telephone Co.* v. *Public Utilities Comm'n*, *supra*.

Exceptions Filed Pursuant to Rule 4.21

Moreover, even where resort to notice is proper a fair opportunity for rebuttal has to be accorded the party (1990) affected. *United States* v. *Abilene & So. Ry.*, 265 U. S. 274, 288-89 (1924). See also *Republic Aviation Corp.* v. *National Labor Relations Bd.*, 324 U. S. 793 (1945); *Morgan* v. *United States*, 298 U. S. 468, 480 (1936); *Crowell* v. *Benson*, 285 U. S. 22, 48 (1932); *Erie R. R.* v. *United States*, 59 F. Supp. 748 (S. D. Ohio 1944); 64 F. Supp. 162 (S. D. Ohio 1945); *Kline* v. *United States*, 41 F. Supp. 577 (D. Neb. 1941); *West Ohio Gas Co.* v. *Public Utilities Comm'n*, 42 F. 2d 899 (N. D. Ohio 1928).

No change was made in these principles by the Administrative Procedure Act. Congress did not enlarge the area appropriate for official notice beyond what the courts were willing to recognize. It made clear that in its view such notice could be taken "only of generally recognized and ordinarily indisputable facts." H. R. Rep. No. 1980, 79th Cong., 2d Sess. 38 (1946). See also Sen. Doc. No. 8, 77th Cong., 1st Sess. 71-73 (1941); Sen. Rep. No. 752, 79th Cong., 1st Sess. 32 (1945); 92 Cong. Rec. 5653 (1946). Its chief concern was to ensure that where notice was properly taken, parties to administrative proceedings be protected. Accordingly, in Section 7(d) of the Act, 5 U. S. C. §1006(d), it gave statutory sanction to the right of rebuttal so as to reinforce the case law on this point.

The findings in *Firestone* which the Examiner noticed consist entirely of matters not appropriate for official notice since they are neither obvious nor notorious. The most egregious example is the percentage figures set forth in the *Firestone* opinion as to each tire brand's share of the 1954 replacement tire market which finding rests in that proceeding upon the "Crowell-Collier Automotive Survey —1955" admitted into evidence in *Firestone* without objection. Crowell-Collier's market share percentages are not based upon actual sales figures, which all tire com-

panies guard as trade secrets, but are estimates derived by unknown pollsters of an unknown segment of the millions upon millions of car owners in the United States. None of the data underlying these estimates was made available in either the *Firestone* or this proceeding, nor was any evidence adduced in either proceeding as to how such data was collected and how the percentage estimates were derived. That resort was had by Crowell-Collier to this roundabout and inexact method to estimate market share percentages itself demonstrates that true market share figures are unknown and that what was noticed was the exact opposite of obvious and notorious fact. Accordingly, it was clearly improper to take official notice of these market share figures since they were not "generally recognized and ordinarily indisputable facts." H. R. Rep. No. 1980, 79th Cong., 2d Sess. 38 (1946).

(1991) Because these market share percentages and other data had been included as findings in the *Firestone* opinion did not establish them as fact in this proceeding against totally different parties. It is a deprivation of due process for an adjudicative tribunal to decide one case on the basis of facts found against strangers in another case. *Kirby* v. *United States*, 174 U. S. 47 (1899); *Tappan* v. *Beardsley*, 77 U. S. (10 Wall.) 427 (1871); *McLaughlin* v. *Swann*, 59 U. S. (18 How.) 217 (1856); *National Marine Engineers Beneficial Ass'n* v. *National Labor Relations Bd.*, 274 F. 2d 167 (2d Cir. 1960); *Spector* v. *United States*, 193 F. 2d 1002 (9th Cir. 1952); *White* v. *Central Dispensary & Emergency Hospital*, 99 F. 2d 355, 358-59 (D. C. Cir. 1938); *Woodward* v. *United States*, 106 F. Supp. 14 (N. D. Iowa 1952), *aff'd*, 208 F. 2d 893 (8th Cir. 1953); *Wilson Chemical Co.*, F. T. C. Dkt. 8474 (Order, Oct. 29, 1962); *William Adams, Inc.*, 53 F. T. C. 1164 (1957).

By his erroneous official notice rulings, the Hearing Examiner prejudiced Texaco in that he shifted the burden

of proof from complaint counsel to Texaco and foreclosed cross-examination contrary to the requirements of due process, the Administrative Procedure Act and the Rules of the Commission. What was the obligation of complaint counsel to establish by reliable, probative and substantial evidence—with the appropriate testimonial foundation—became the obligation of Texaco to disprove in violation of Section 7(c) of the Administrative Procedure Act and §4.12(c) of the Rules of the Commission. Without the proffer of a witness by complaint counsel, Texaco likewise was denied the right of cross-examination. Since Texaco had not been a participant in the *Firestone* proceeding, it has never been afforded the opportunity to test by cross-examination the reliability and admissibility of any of the *Firestone* items officially noticed, nor incidentally had they been so tested by the parties to *Firestone*. *Cf. American Luggage Works, Inc.* v. *United States Trunk Co.*, 158 F. Supp. 50 (D. Mass. 1957), *aff'd sub nom. Hawley Products Co.* v. *United States Trunk Co.*, 259 F. 2d 69 (1st Cir. 1958); *Standard Oil Co.* v. *Standard Oil Co.*, 252 F. 2d 65, 75 (10th Cir. 1958); *Sears, Roebuck & Co.* v. *All States Life Insurance Co.*, 246 F. 2d 161 (5th Cir. 1957), *cert. denied*, 355 U. S. 894 (1957); *Bristol-Myers Co.* v. *Federal Trade Comm'n*, 185 F. 2d 58 (4th Cir. 1950); *Crown Zellerbach Corp.*, 51 F. T. C. 1105, 1111-13 (1955). An adjudicative proceeding which denies the right of cross-examination cannot stand. *Reilly* v. *Pinkus*, 338 U. S. 269 (1949); *Greene* v. *McElroy*, 360 U. S. 474 (1959); *Kline* v. *United States*, 41 F. Supp. 577 (D. Neb. 1941); Section 7(c) of the Administrative Procedure Act, 5 U. S. C. §1006(c); and §4.14(b) of the Rules of the Commission.

(1992) Further, by officially noticing items from *Firestone* the Examiner patently ignored the holding in that very case that each TBA proceeding must be decided on its own separate record.

Exceptions Filed Pursuant to Rule 4.21

5. Texaco excepts to the ruling of the Hearing Examiner that under the doctrine of official notice he could accept the figures appearing in the Crowell-Collier Automotive Surveys for the years 1946 through 1955, inclusive, and the accompanying affidavits, as *prima facie* proof of the truth of the matters stated (Tr. 4532-33).

The grounds are that none of this material was the proper subject of official notice and that the right of cross-examination was flagrantly denied. Over Texaco's objection, it was clearly error to admit the affidavits, prepared for the litigation, of Goodrich's employee Bartley, whose availability was not in question. See *Poller* v. *Columbia Broadcasting Co.*, 368 U. S. 464, 473 (1962). Moreover, because a table in the *Firestone* opinion was predicated upon similar material put in evidence in that proceeding without objection from the parties thereto did not make such material admissible in this proceeding without any testimonial foundation and over the objection of Texaco. The accompanying affidavits—themselves inadmissible—did not provide a foundation subject to the test of cross-examination.

See also the reasons set forth in respect to Exception 4, *supra*, and the grounds and authorities set out more fully in Point I of Texaco's brief filed herewith.

6. Texaco excepts to the failure of the Hearing Examiner to issue the subpoenas requested by Texaco (Tr. 4530; RX 109), which were required for the purpose of disproving and rebutting the materials improperly noticed (Tr. 4523-25; 4530).

The grounds are that such failure was:

(i) In contravention of Section 6(c) of the Administrative Procedure Act, 5 U. S. C. §1005(c), governing parties' rights to agency subpoenas;

Exceptions Filed Pursuant to Rule 4.21

(ii) In contravention of §4.15 of the present Rules of Practice of the Federal Trade Commission implementing the said Section 6(c) of the Administrative Procedure Act;

(iii) In contravention of Section 7(d) of the Administrative Procedure Act, 5 U. S. C. §1006(d), guarantying to parties a fair opportunity to show the contrary of matter officially noticed; and

(iv) In contravention of §4.12(c) of the present Rules of Practice of the Commission implementing said Section 7(d) of the Administrative Procedure Act.

(1993) To disprove the noticed data and to prove the true facts, Texaco made written application for subpoenas *duces tecum* to compel the disclosure of the sales figures (1951-1956) of 17 named companies and the sales commission agreements of 8 named companies (Tr. 4523; RX 109). In addition, Texaco asked for 20 subpoenas *ad testificandum* in blank to be filled in by the following day (RX 109).

It is uncontroverted that without compulsory process Texaco could not obtain the information required to rebut the material which the Examiner improperly noticed (Tr. 4520; RX 109). In anticipation of just such a situation, Congress in the Administrative Procedure Act guaranteed private parties the right to agency subpoenas. Sen. Doc. 248, 79th Cong. 2d Sess. 27 (1946). The relevant grounds and authorities are more fully stated in Texaco's brief filed herewith (Point III).

The denial of the compulsory process needed to secure the evidence without which Texaco could not disprove the officially noticed material was, in effect, a denial of an opportunity to rebut and be fairly heard.

Exceptions Filed Pursuant to Rule 4.21

7. Texaco excepts to the failure of the Hearing Examiner otherwise to grant it a fair opportunity to disprove the facts of which he erroneously took official notice and to afford it a reasonable time to prepare for and meet the case-in-chief (Tr. 4513-14; 4520; 4523-24; 4531; RX 109).

The grounds are that the Hearing Examiner violated Sections 5(a) and 7(d) of the Administrative Procedure Act and §§4.12(c) and 4.14(e) of the Rules of Practice of the Commission in not permitting Texaco to disprove the material which he improperly noticed and in setting and terminating the hearings without regard to Texaco's necessities respecting rebuttal. In view of the unprecedented official notice rulings, Texaco was plainly justified in its request for an adjournment of three business days in which to prepare to show the contrary of the matters noticed. Denial of this request patently foreclosed Texaco from a fair opportunity to rebut.

The grounds for this exception are developed in further detail in Texaco's brief filed herewith (Point III).

8. Texaco excepts to the failure of the Hearing Examiner to grant Texaco's motion to dismiss the complaint at the conclusion of the case-in-chief on the remand (Tr. 4499-501).

The grounds are that no evidence had been adduced by complaint counsel, that what had been officially noticed by the Examiner had been noticed in error, and that even assuming, *arguendo*, that the officially noticed materials properly are part of the record, it remained insufficient to support the complaint. Accordingly, in view of the (1994) Commission's opinion of March 9, 1961 holding that the record did not prove anticompetitive effects, which is the decisive issue, the Hearing Examiner had no choice but to

dismiss the complaint since nothing had been adduced to cure the deficiency.

The grounds and authorities in support of the foregoing are stated more completely in Exceptions 4, 5, 9, 33-35 and 38-47 hereof, and in Points I and II of Texaco's brief filed herewith.

9. Texaco excepts to the filing by the Hearing Examiner on September 24, 1962 of a revised Initial Decision and to the findings, conclusions and order contained therein insofar as the first Initial Decision has been changed and the complaint has not been dismissed.

The grounds are that the Remand Order conferred no authority upon the Hearing Examiner to change his first Initial Decision except "in the light" of evidence, if any, of competitive effects received during the remand hearings. Since no such evidence was received, and the officially noticed materials were without probative significance, the Hearing Examiner had no authority to revise his first Initial Decision which the Commission had rejected.

This exception applies as well to each of the specific Exceptions to the revised Initial Decision in Part II hereof and, for the sake of brevity, is not each time repeated.

10. Texaco excepts to the trial of the issues here involved in other proceedings, to which Texaco was not a party, by the same Hearing Examiner.

The grounds are that this violated the requirements of due process of law. The authorities in support thereof are fully set forth at pages 55-57 of the document entitled "Appeal from Initial Decision of Examiner and Brief in Support of Appeal" dated February 1, 1960. In the interests of brevity and conciseness and to avoid repetition reference is made thereto as though fully set forth herein. Fur-

ther, by taking official notice of items in the *Firestone* opinion at the remand hearings in this case and of other materials resembling them, the Examiner again manifestly intermingled these separate proceedings in deprivation of due process. For additional examples of prejudice which result from such commingling of evidence, see the discussion in Exceptions 26 and 44, *infra*.
(1995)

II

EXCEPTIONS TO THE REVISED INITIAL DECISION

These exceptions are made without prejudice to Texaco's basic contentions that the remand proceeding was unlawful; that the Examiner was without authority to change his first Initial Decision except "in the light" of new evidence of competitive effects none of which was received; and that in view of the Commission's opinion of March 9, 1961 holding that anticompetitive effects had not been proved the Examiner should have dismissed the complaint. However, as the Hearing Examiner in his revised Initial Decision purported to deal with the pre-remand record, Texaco in order to avoid any claim of waiver must do the same. But since Texaco in the briefs and other papers previously filed with the Commission has fully covered its objections to so much of the revised Initial Decision as repeats the first Initial Decision, reference will be made for the sake of conciseness and brevity to those briefs and papers. In such case, the grounds for each exception and the authorities relied on in support thereof will be found at the specific pages cited. The documents to which reference will be made are as follows:

Exceptions Filed Pursuant to Rule 4.21

A. Document in white cover entitled "APPEAL FROM INITIAL DECISION OF EXAMINER AND BRIEF IN SUPPORT OF APPEAL," dated February 1, 1960 (hereinafter referred to as "App. Br."; the numerical citation following this abbreviation refers to the pages of said Appeal Brief).

B. Gray covered volume consisting of 167 printed pages, entitled "APPENDIX OF RESPONDENT TEXACO INC. CONTAINING REPRODUCTIONS OF RESPONDENT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS AND OTHER MATTERS OF RECORD" (hereinafter referred to as "App."; the numerical citation following this abbreviation refers to the pages of said Appendix).

C. Light green covered document entitled "ANSWERING BRIEF OF RESPONDENT TEXACO INC.," dated April 1, 1960 (hereinafter referred to as "Ans. Br."; the numerical citation following this abbreviation refers to the pages of said Answering Brief).

11. Texaco excepts to the statement on Page 2[3] of the Initial Decision that the five trading areas were "typical of the general operations of respondents under the sales commission contract."

The record is devoid of any evidence that the five areas in question were typical of anything. In fact, the Hearing Examiner himself (1996) inferentially recognized (p. 2) that there was no evidentiary basis for the finding when he noted that the five areas merely had been described by complaint counsel as being typical.

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3. These page references are to pages of the Examiner's revised Initial Decision filed September 24, 1962.

Exceptions Filed Pursuant to Rule 4.31

12. Texaco excepts to the statement on page 3 of the Initial Decision that "This proceeding is now before the Hearing Examiner for final consideration in accordance with the remand of the Commission, upon the complaint, answer thereto, testimony and other evidence . . ."

The grounds are that the Remand Order instructed the Hearing Examiner to reexamine the matter only "in the light" of "additional evidence," if any, adduced at the remand hearings. The Hearing Examiner was mistaken in his belief that he had the authority to reevaluate the old record (which the Commission itself had found insufficient to support any type of order) in the absence of new evidence shedding light thereon adduced at the remand.

13. Texaco excepts to the statement on page 4 of the Initial Decision that the Commission did not vacate or set aside the first Initial Decision and that the Commission's order and opinion did not take issue with factual findings made.

Inasmuch as the Commission did not adopt or modify the first Initial Decision, it in effect vacated it. The Commission's remand opinion makes clear that the record was insufficient to support the complaint and that it was insufficient to sustain any order predicated upon a violation of Section 5 of the Federal Trade Commission Act. To the extent that the Examiner's first Initial Decision was to the contrary, the Commssion vacated it and took issue with the pertinent findings.

Exceptions Filed Pursuant to Rule 4.21

14. Texaco excepts to the action of the Hearing Examiner, reflected on page 4 of the Initial Decision, purporting to strike conclusions he had previously made in his first Initial Decision in favor of Texaco upon the identical evidence upon which in his revised Initial Decision he makes conclusions adverse to Texaco.

In more detailed exceptions below we refer specifically to the changed conclusions to which exception is taken.

15. Texaco excepts to Finding of Fact 2, on page 4, that it "is engaged in the production and in the sale and distribution in interstate commerce of petroleum products."

This finding is immaterial, does not relate to tires, batteries and accessories which are the subject matter of the complaint herein, and is insufficient to give this Commission jurisdiction with respect to the (1997) subject matter of the complaint. In place of this finding, Texaco's Proposed Finding 3 (App. 4) should be made. For the grounds of this exception and supporting authorities, reference is made to Point III, App. Br. 50-52, and to Exception 47, *infra*.

16. Texaco excepts to Finding of Fact 3, pages 4-5.

This finding is incomplete in that it ignores the many thousands of service stations to which Texaco sells its products but with which Texaco has no contractual relations (see App. 153; CX 116, 118; Glenn 367, 373). Texaco's Proposed Additional Findings 1 and 2 (App. 153) should be made in place of this Finding 3.

Exceptions Filed Pursuant to Rule 4.21

17. Texaco excepts to Finding of Fact 5, pages 5-6.

This finding is incomplete in that it omits the non-contract service stations referred to in the preceding exception. Texaco's Proposed Additional Finding 1 (App. 153) should be made in place of Finding 5.

18. Texaco excepts to Finding of Fact 10(b), page 7.

This finding is a complete distortion of the evidence of the actual suggestion to Texaco salesmen contained in the letter from the home office (CX 50). It advised that, in the interest of continually assisting the Texaco dealer at the time of each regular call at the service station, field personnel should be sufficiently alert, without waiting for a formal request from the dealer, to call the dealer's attention to their willingness to write up an order for the Goodrich or Firestone merchandise needed. But, since this was no suggestion that orders be written up without dealer request, it is very different from what the Examiner found. After all, when a salesman in any line of business calls on a customer he usually indicates a willingness to take an order. If he did not, he would not be a salesman for long.

19. Texaco excepts to Findings of Fact 11 and 12, pages 8-10.

These findings are misleading and incomplete because they include no correction for the effects of inflation and the increase in passenger car registration and passenger car miles traveled during the years used for comparative purposes. If the undisputed facts in the record were included in these findings, they would indicate that the actual increase in TBA sales under the sales commission contracts amounted in eight years to 16.6% while during

the same period the market demand increased more than 50% (RX 84A-D; Madison 4083-148). See Texaco's Proposed Findings 49, 50, 51 and 52, which summarize the apposite evidence (App. 69-72).

(1998) Also, the uncontradicted evidence demonstrates that more than 70% of all Texaco dealers (approximately 28,000) do not regularly purchase any tires and tubes under the sales commission contracts, and more than 80% of such dealers (about 32,000) do not regularly purchase sponsored batteries or accessories (App. 65-68). When this is measured against the fact that not a single Texaco dealer purchased sponsored TBA exclusively, it is axiomatic that there has been no market foreclosure—substantial or otherwise.

20. Texaco excepts to Finding of Fact 13, page 10.

This is not a finding based upon evidence but purports on its face to state a *contention* made by counsel supporting the complaint. The Examiner, in his first Intial Decision (and the Commission itself in its opinion remanding this proceeding), concluded from the *evidence* that the contention of counsel supporting the complaint was erroneous.

21. Texaco excepts to Findings of Fact 14(a), (b), (c), (d), (e) and (f), pages 10-12.

These findings are incomplete and misleading. The entire undisputed evidence of, and respecting, the six witnesses which the Examiner purports to summarize in these findings is accurately set forth in Texaco's Proposed Findings 63, 64 and 65 (App. 83-86). The latter findings should be made in place of Findings 14(a), (b), (c), (d), (e) and (f). For further grounds of this exception reference is made to App. Br. 15-19.

Exceptions Filed Pursuant to Rule 4.21

22. Texaco excepts to Finding of Fact 15, pages 12-13.

This finding is not factually accurate and misinterprets the law dealing with hearsay evidence. The accurate and undisputed facts with respect to the "representatives of suppliers of TBA" are summarized in Texaco's Proposed Finding 66 (App. 87-90). That finding should be made in place of the first two sentences of this Finding 15. Further support for Texaco's Proposed Finding 66 is set out at App. Br. 19-27.

The Examiner, furthermore, has misapplied *Lawlor* v. *Loewe,* 235 U. S. 522 (1915). He has erroneously utilized hearsay as proof of the alleged "feeling" of witnesses who were not called to testify in spite of the fact that there was no evidence whatever that these unsworn declarants had been in any way "required to purchase" TBA on which a sales commission was payable and in spite of the fact that there was no evidence that the declarants did not in fact buy TBA entirely outside (1999) of the sales commission contracts. Amplification of this argument is to be found at App. Br. 19-20.

23. Texaco excepts to Finding of Fact 17, page 13.

There is no evidence whatever in the record to support the Examiner's gratuitous assumption that the 54 honest, reputable and unimpeached dealers who testified on behalf of Texaco "were under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases." Furthermore, this unfounded assumption in the first sentence of Finding 17 is contradicted by the last two sentences of the same finding. The substance of the evidence of dealers testifying for Texaco is to be found in Texaco's Proposed Findings 39, 40, 41 and 42 (App. 42-55) and Proposed Finding 68 (App. 92-96), which findings should be made in place of Finding 17.

Exceptions Filed Pursuant to Rule 4.21

In addition, Texaco's Proposed Finding 31 should be made. There is no credible evidence in the record that Texaco ever terminated its business relationship with a dealer because of such dealer's failure to purchase TBA covered by the sales commission contracts (App. 34).

24. Texaco excepts to Finding of Fact 18, pages 13-14.

The objection is to the implication that the policy of Texaco forbidding any type of dealer coercion was motivated by an antitrust case filed against Standard Oil Company of California. There is no evidence to support this implication. The first policy letter in the record, namely the one of June 1, 1948, did not create the policy but merely "restated" the existing policy which forbade coercion of any type (RX 2, 6). The voluminous and uncontradicted testimony in this record establishes that Texaco has recognized that any type of dealer coercion is poor salesmanship which would create dealer dissatisfaction contrary to Texaco's best interests (Texaco's Proposed Findings 28, 29 and 30 (App. 31-33)). Finding 18 should be amended by striking the portion of it preceding the word "Walter" in line 2, and the word "so-called" should be eliminated in line 4. Texaco's Proposed Finding 30 (App. 33) should be made.

25. Texaco excepts to the second sentence of Finding of Fact 19, page 14.

This sentence is confusing, self-contradictory and seeks to leave the erroneous impression that the policy of Texaco against any coercion whatever was not freely disseminated to all of its dealers. The uncontradicted evidence establishes that Texaco's policy of non-coercion was freely disseminated and thoroughly understood by dealers handling (2000) its products (App. 38-52). Accordingly, in place of the second sentence of Finding 19, Texaco's Proposed Findings 35, 36, 37 and 38 (App. 38-41) should be made.

Exceptions Filed Pursuant to Rule 4.21

26. Texaco excepts to the third and fourth sentences of Finding of Fact 20, page 14.

With respect to the third sentence, each of the six ex-dealers called in support of the complaint in fact testified that they handled TBA other than that purchased from Goodrich or Firestone (Texaco's Proposed Findings 63, 64 and 65 (App. 83-86)). The fourth sentence of Finding 20 is based upon a very significant mistake made by the Examiner. There is no evidence which in any way supports the finding that a Texaco salesman's compensation was based "in part, upon commission on sales of sponsored TBA." The evidence is expressly to the contrary (Halsell 196; Knight 596; Burgess 1016). The Examiner once again became confused by reason of handling three separate TBA cases simultaneously (over Texaco's objection). He has reference in the present case to evidence found in the *Atlantic Refining Company* case, F. T. C. Dkt. 6486. This prejudicial vice is discussed at App. Br. 55-57.

27. Texaco excepts to Finding of Fact 21, page 14.

The Examiner's purported finding of coercion and pressure upon dealers is contrary to the overwhelming weight of the evidence in this record and is unsupported by any reliable, substantial and probative evidence. The foregoing propbsition has been fully argued by Texaco (App. Br. 9-37, 39-47).

In finding coercion on the evidence in this record, the Examiner falls into preeisely the same error as did the Commission in *Timken Roller Bearing Co.*, F. T. C. Dkt. 6504, *reversed, Timken Roller Bearing Co.* v. *Federal Trade Comm'n*, 299 F. 2d 839 (6th Cir. 1962), *cert. denied*, 371 U. S. 861 (1962).

The finding of coercion is likewise contrary to the law as established in *United States* v. *J. I. Case Co.*, 101 F.

Supp. 856 (D. Minn. 1951); *Pittsburgh S. S. Co.* v. *National Labor Relations Bd.*, 180 F. 2d 731 (6th Cir. 1950), *aff'd*, 340 U. S. 498 (1951). Other supporting authorities are set out in App. Br. 45-47.

28. Texaco excepts to so much of Finding of Fact 26, page 16, as refers to arrangements between The B. F. Goodrich Company and oil companies other than Texaco.

Texaco is not a party to any of these other arrangements, is not bound thereby and is not responsible for the arrangements between (2001) Goodrich and other oil companies or the consequences thereof. The evidence concerning the relations between Goodrich and other oil companies was all received over Texaco's vigorous objection (Tr. 2228; 2230-31; and see reiteration of objection Tr. 2232-59; 2264-85; 2287-88).

29. Texaco excepts to so much of Finding of Fact 27, page 16, as states that the typical service station "requires" a fully stocked source of supply close at hand.

While it is perhaps convenient to have a TBA source of supply close at hand, this is by no means required. Numerous instances in the record show service station dealers regularly patronizing TBA supply points at a great distance from the service station. An outstanding example of this was dealer Spradling, of Buhl, Idaho, who obtained his tires and batteries from a United States Rubber Company supplier 255 miles away in Salt Lake City, although a sponsored Firestone dealer was close at hand and that dealer's delivery truck went past Spradling's station once a day (Spradling 2929-30; App. 96). The table of suppliers of non-sponsored TBA to Texaco dealers (Appendix R-2 (App. 157-67)) in some instances indicates the location of the supplier. There are numerous cases in which such sup-

plier is located in a different town from a dealer and at a considerable distance from him. (See, *e.g.*, McGuire[4]—25 miles (App. 159); Roessner—200 miles (App. 160); Rogers—75 miles (App. 160); Burnett—100 miles (App. 162); Whiting—33 miles, 150 miles and 160 miles (App. 162); Toothman—65 miles (App. 162); Sizemore—80 miles (App. 163); Linton—20 miles (App. 165); Conner—40 miles, 20 miles and 35 miles (App. 166); Eubanks—170 miles (App. 167); McAnally—100 miles, 155 miles and 40 miles (App. 167).)

30. Texaco excepts to so much of Finding of Fact 28, page 17, as implies that a service station operator is free *only* to deal with "any Goodrich supply point he may prefer."

The fact is—as the entire record shows—that a service station operator is free to deal with any TBA supplier chosen by him. Appendix B-2 (App. 157-67) lists some 250 suppliers of non-sponsored TBA for some 54 service station operators. See also citations in support of Texaco's Proposed Finding of Fact 39(c) (App. 45); Proposed Finding 40 (App. 47-52); Proposed Finding 45 (App. 58-61); and Appendix A (App. 113-48).
(2002)

31. Texaco excepts to Finding of Fact 30, page 18.

In support thereof Texaco urges the same grounds set forth in its Exception 28 to Finding 26, *supra*.

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4. In each instance in this listing the first word is the name of the service station operator. The distance in miles is the approximate straight line distance between the service station and one or more of his TBA suppliers.

Exceptions Filed Pursuant to Rule 4.21

32. Texaco excepts to Finding of Fact 31, page 18, insofar as it relates to arrangements between Goodrich and oil companies other than Texaco.

In support thereof Texaco reasserts the grounds stated in its Exception 28 to Finding 26, *supra*.

Texaco further excepts to so much of Finding of Fact 31 as states that Texaco had a certain number of C and D stations "which would be subject to the sales commission contract."[5]

This finding is unsupported by any evidence. Indeed, the undisputed facts in the record show that only a very small per cent of all Texaco dealers purchased *any* TBA under the sales commission contracts (Proposed Finding 48 (App. 66-67)). Accordingly, the implication in Finding 31 that 16.5% of service stations in the United States purchased under the sales commission plan is entirely unsupported by the record, completely erroneous and relates to an incorrect market "universe."

33. Texaco excepts to Finding of Fact 32, pages 18-19.

This finding is totally without evidentiary support. It rests entirely upon material from the *Firestone* opinion of which the Hearing Examiner erroneously took official notice. The grounds for this exception and the supporting authorities are the same as those for Exception 4, *supra*, and are set forth in greater detail in Point I of Texaco's brief filed herewith. Likewise, the finding is meaningless (Point II of said brief) and an opportunity to disprove it was denied (Point III of said brief).

5. The designations "C" and "D" stations is nomenclature used in this proceeding. Texaco, in the course of its daily business, does not use such designations.

Exceptions Filed Pursuant to Rule 4.21

34. Texaco excepts to Finding of Fact 33, pages 19-20.

This finding is totally without evidentiary support. It rests entirely upon materials of which the Hearing Examiner erroneously took official notice. The grounds for this exception and the supporting authorities are the same as those set forth for Exceptions 4 and 5, *supra*, and are set forth in greater detail in Point I of Texaco's brief filed herewith. Likewise, the finding is meaningless (Point II of said brief) and an opportunity to disprove it was denied (Point III of said brief).
(2003)

35. Texaco excepts to Finding of Fact 34, page 21.

This finding is totally without evidentiary support. It rests entirely upon material from the *Firestone* opinion of which the Hearing Examiner erroneously took official notice. The grounds for this exception and the supporting authorities are the same as those for Exception 4, *supra*, and are set forth in greater detail in Point I of Texaco's brief filed herewith. Likewise, the finding is meaningless (Point II of said brief) and an opportunity to disprove it was denied (Point III of said brief).

36. Texaco excepts to the Examiner's failure to make findings incorporating in substance Texaco's Proposed Findings 3 through 82 and Additional Findings 1 through 11.

These findings are fully supported by the evidence and applicable law. The grounds for this exception and the supporting authorities with respect to each of the Proposed Findings 3 through 68 are to be found at App. 4-96, and with respect to Additional Findings 1 through 11 at App.

153-56. The Conclusory Findings 69 through 82 follow from the other findings just cited and are discussed at App. 97-110.

37. Texaco excepts to the Examiner's failure to make findings incorporating in substance its Proposed Findings of Fact and Conclusions of Law on Remand dated August 20, 1962.

The grounds for this exception and the citation of authorities in support thereof are fully set forth in Exceptions 4-9, 33-35, 44-47 herein and in Texaco's brief filed herewith.

38. Texaco excepts to Conclusion 1, page 21.

This conclusion, made on the basis of the identical evidence before the Examiner at the time of his first Initial Decision, is unsupported by any specific findings; is not supported by any reliable, probative and substantial evidence; and is diametrically opposed to the Examiner's Conclusions 3, 4 and 6 contained in his first Initial Decision which have been deleted from the revised Initial Decision and replaced with Conclusions to which exception is taken. Texaco in fact does not have, nor does the record show the existence of, any "economic power" by Texaco over its distributors sufficient to cause them to purchase sponsored TBA or, indeed, anything else. Absolutely nothing in this connection was adduced at the remand hearings. For the portions of the record relied upon, reference is made to the following proposed findings and their supporting citations: Texaco Proposed (2004) Finding 27 (App. 30); Proposed Additional Finding 5 (App. 154). The grounds for these exceptions are more fully set forth, together with supporting authorities, in App. Br. 4-5; Ans.

Br. 6-14. The proposed findings above cited should be made and the Examiner's Conclusions in his first Initial Decision numbered 3, 4 and 6, should be reinstated in place of Conclusion 1.

39. Texaco excepts to Conclusion 2, page 21.

This conclusion dealing with alleged coercion and coercive conduct is erroneous. It is not supported by the findings of fact, it is contrary to the record as a whole, and it is not supported by reliable, probative and substantial evidence. The exceptions above taken with respect to Findings 14, 15, 17, 18, 19, 20 and 21 apply to this conclusion. The Examiner's conclusion cannot stand in the face of the overwhelming evidence to the contrary. See Texaco's Proposed Findings 27-44, 53-68 (App. 30-57, 73-96); App. Br. 9-37, 39-47; and Ans. Br. 14-27, where the portions of the record relied upon are fully set forth and discussed.

Attention is particularly called to the fact that counsel supporting the complaint in the course of the hearings advised the Examiner that there was no contention in the proceeding that Texaco had coerced its dealers in connection with the sale of TBA products (Tr. 4377).

The authorities cited in support of the exception taken to Finding 21 show that the conclusion of coercive conduct is entirely improper and unfounded.

40. Texaco excepts to Conclusion 3, page 22, in that it incorrectly interprets and applies the Commission's opinion and Remand Order of March 9, 1961.

Conclusion 3 recites that the issue for the Hearing Examiner's consideration under the terms of the Commission's "opinion and order of remand" is:

"* * * the competitive effects of the sales commission plan used by Goodrich with The Texas Company, *and*

> *whether Texaco's exercise of such economic power in favor of Goodrich and Firestone under their sales commission contracts have* [*sic*] *sufficient competitive effect to constitute an unfair method of competition or an unfair act or practice''* (emphasis added).

The Commission's remand opinion, however, directed only that the Hearing Examiner receive additional evidence, specifically market data, (2005) "indicating the competitive effects of *the sales commission contracts* at the manufacturing, wholesale and retail levels of TBA distribution" (Opinion, p. 10, March 9, 1961; emphasis added). Consequently, the Examiner misstated the issue open on the remand in saying that it was "whether Texaco's *exercise of such economic power* • • • have [*sic*] sufficient competitive effect to constitute an unfair method of competition or an unfair act or practice" (emphasis added). Absent actual evidence of substantial anticompetitive effects at the manufacturing, wholesale and retail levels of TBA distribution flowing from the sales commission contracts themselves, the existence of Texaco's economic power, if any, over customers and the manner in which it was implemented and the extent to which it was exercised, if at all, were declared by the Commission to be insufficient to support the charge in the complaint.

Furthermore, it was only in the light of new evidence of competitive effects of the contracts that the Examiner was authorized to indicate what changes, if any, he wished to make in his first Initial Decision. Since no such evidence was introduced on the remand, and none of the officially noticed data sheds light on competitive effects, and nothing adduced at the remand related to economic power, the Examiner had no evidence upon which and no authority to revise his first Initial Decision (see Exceptions 8 and 9, *supra*). Accordingly, the Examiner should not have substituted this inconsistent and contrary Conclusion for his

original Conclusions 3, 4, 5 and 6 negating that Texaco had sufficient economic power over its dealers to cause them to purchase sponsored TBA.

41. Texaco excepts to Conclusion 4, page 22.

This conclusion, based on the identical evidence considered by the Examiner in his first Initial Decision, is not supported by any specific findings, is not supported by reliable, probative and substantial evidence, and is directly contrary to the Examiner's Conclusion 5 in his first Initial Decision. There the Examiner concluded that the "consideration for the payment of commissions under the sales commission contract with Goodrich was based upon substantial services rendered by Texaco in promoting the sale of Goodrich TBA to Texaco dealers and distributors." The Examiner's said original Conclusion 5 in turn is related to his original Conclusions 3, 4 and 6 in his first Initial Decision which deny the existence of any economic control by Texaco over its dealers.
(2006)

The record is entirely devoid of any finding that Texaco at any time removed from the open market any number of new or established Texaco dealers or caused them to purchase Goodrich TBA either exclusively or in substantial quantities. It is significant that on the identical evidence in the first Initial Decision the Examiner reached no such conclusion. As he then recognized, the evidence permits of no such conclusion. The portions of the record relied on are:

> As to the operation of the sales commission contracts and the undoubted propriety of such operation —Texaco's Proposed Findings 18-26 and evidence cited in support thereof (App. 20-29);

With respect to the performance of its contracts by Texaco and the entire lack of coercive conduct—Texaco's Proposed Findings 27-44 and evidence cited in support thereof (App. 30-57);

As to the nonexistence of any market foreclosure —Texaco's Proposed Findings 45-52 and evidence cited in support thereof (App. 58-72);

That the recommendation of Firestone or Goodrich TBA to new dealers in no way foreclosed competition, but, if anything, merely encouraged dealers to purchase some kind of TBA, including competing lines—the testimony of 11 witnesses summarized at Ans. Br. 42-43; also see Texaco's Proposed Findings 54-68 and evidence cited in support thereof (App. 74-96).

42. Texaco excepts to Conclusion 5, page 22.

This exception is based primarily on the statement that "practically all of the competitors of Goodrich in the selected trade areas in which testimony was taken, testified" to alleged difficulty in selling TBA to Texaco stations. The conclusion is entirely without support in the record as a whole, and is not supported by reliable, probative and substantial evidence. For example, it is undisputed that in the city of Chicago alone there were more than 500 TBA distributors (Gehrke 715; Chanenson 856-57) competing with the 7 distributors whose employees testified on behalf of the complaint. In the Omaha area there were 19 competitors (Toft 1181-83) and representatives of only 3 TBA distributors testified. In Dallas, where the principal witnesses in support of the complaint came from one supplier, there were 100 competing distributors of batteries alone (McCann 1533). Reference is made to additional citations to the record in support of Texaco's Proposed Finding 54 (App. 74).

(2007)

The remainder of Conclusion 5 either is based upon a misconstruction of the law with respect to hearsay evidence covered in Exception 22 taken to Finding 15, *supra*, or is entirely without foundation in the record. The record shows that very substantial amounts of competing non-sponsored TBA were purchased by the dealers who testified or to whom reference was made in the testimony. For the portions of the record relied upon, reference is made to the tables in Appendix A (App. 113-48); Appendix R-2 (App. 157-167); Texaco's Proposed Findings 39 and 40 (App. 42-52) and 66 (App. 87-90). See also Texaco's Proposed Finding 45 showing most substantial purchases by Texaco stations from dealers selling competing non-sponsored TBA (App. 58-61). For supporting authorities and further elaboration of the grounds for this exception see discussion App. Br. 19-37 and Ans. Br. 36-47.

43. Texaco excepts to Conclusion 6, page 22.

The record is devoid of any support whatever for this conclusion. This proposition has been specifically briefed with citations to the record (Ans. Br. 41-43) and reference is made to this document for the portions of the record relied upon.

44. Texaco excepts to Conclusion 7, pages 22-23.

The grounds are:

(i) Insofar as this conclusion is in any way related to the findings, it rests upon findings which are meaningless and from which no reasonable inferences could be drawn and which findings in turn are based upon inadmissible materials of which official notice was erroneously taken and

respecting which no opportunity to disprove was provided (see Exceptions 4, 5, 6, 7 and 34, *supra*).

(ii) The conclusion has no support whatsoever in reliable, probative and substantial evidence.

(iii) The statement respecting "a possible doubling of gross income during that period by Goodrich" is both without basis and patently illogical. For a further discussion of this point, see Exception 19, *supra*, and page 37 of Texaco's brief filed herewith.

(iv) The statement that "the percentages shown in said tabulation fully complies [*sic*] with the requirement of substantiality" is meaningless (see page 38 of Texaco's brief filed herewith).
(2008)

(v) The last two sentences, unsupported by any finding, represent a further prejudicial intermingling of the records in the several TBA proceedings in violation of due process (see Exception 10, *supra*), are irrelevant, are an improper manifestation of "collective guilt" attributing to Texaco the acts of others beyond its control, take no account of the pending cease and desist orders against Firestone (Dkt. 6487) and Goodyear (Dkt. 6486), and even ignore the declining market shares of the named tire companies as shown by the figures to which the Examiner has reference; and

(vi) With respect to the decisive issue of competitive effects, the insignificance and meaningless character of this entire conclusion is further manifested by its rejection in the succeeding Conclusion 8 wherein the Examiner states: "The above share of the market percentages are [*sic*] not controlling on the question of injury to competition * * *" (see pages 37-38 of Texaco's brief filed herewith).

Exceptions Filed Pursuant to Rule 4.21

45. Texaco excepts to Conclusion 8, page 23.

In support thereof Texaco asserts that the quoted dollar figures do not show the proper relative picture and are based upon findings which in turn are misleading and incomplete (see Exception 19 to Findings 11 and 12, *supra*). Moreover, the record does not show, nor did the Examiner find, how the sales of Goodrich to Texaco accounts, or the number of those accounts, compared to the overall nationwide TBA sales and the overall number of TBA accounts. Obviously, Texaco accounts and their sales of sponsored TBA represent only a minuscule fraction of the relevant market, to say nothing of the fact that not a single Texaco account dealt in sponsored TBA exclusively. The failure of complaint counsel to adduce evidence from which the appropriate comparison could be made, either before the remand or after, bearing in mind that complaint counsel had the burden of proof, raises the compelling inference that any such evidence would have been adverse to the complaint.

46. Texaco excepts to Conclusion 9, pages 23-24.

The grounds are:

(i) This conclusion is not supported by the findings of fact.

(ii) This conclusion is not supported by the record as a whole and by reliable, probative and substantial evidence.

(2009)

(iii) The reliance upon *Osborn* v. *Sinclair Refining Co.*, 286 F. 2d 832 (4th Cir. 1960), is entirely misplaced. The facts in that case are not substantially the same as in the present case and the issue was a totally different one.

Moreover, that case did *not* condemn the sales commission arrangement between the oil company and tire company there involved. What it held to be illegal was the oil company's imposition of a tie-in which is absent here. The Commission in its opinion of March 9, 1961 made it abundantly clear that the *Osborn* decision did not read on the governing issue in this proceeding and was no substitute for evidence of anticompetitive effects. The Commission is referred to pages 38-39 of Texaco's brief filed herewith for a further discussion of the differences between the two cases.

(iv) The facts in this case are not "contrary to the spirit of the Clayton Act" nor, if they were, would they constitute a violation of the Federal Trade Commission Act. See Handler, *Recent Antitrust Developments,* 71 Yale L. J. 75, 90-98 (1961), and reasons and authorities cited therein. Indeed, the Examiner applied an improper legal standard in determining what constitutes a violation of either the Clayton Act or the Federal Trade Commission Act. The record will not support a conclusion of violation of any applicable statute under any appropriate standard.

(v) The last sentence of this conclusion is unsupported by the findings and is contrary to the record in this proceeding and to applicable law.

47. Texaco excepts to Conclusion 10, page 24.

The grounds are:

(i) Since no finding has been made that the challenged practices took place in interstate commerce this conclusion must fall because of the absence of an essential, jurisdictional finding (see App. Br. 50-52).

(ii) This conclusion is not supported by the findings of fact.

(iii) This conclusion is not supported by the record as a whole and by reliable, probative and substantial evidence.

(iv) This conclusion is entirely contrary to the Examiner's conclusions in his first Initial Decision, specifically his Conclusions 2, 3, 4, 5 and 6, which should be reinstated.

(v) This conclusion is not supported by the findings of fact proposed by Texaco which for the reasons stated elsewhere herein should be substituted in place of the findings made by the Hearing Examiner.
(2010)

(vi) This conclusion is contrary to applicable law (App. Br. 53-54; Ans. Br. 47-56).

The grounds for this exception, including the citation of authorities in support thereof, are further set forth in the foregoing Exceptions and in the brief filed by Texaco herewith and in its papers filed in connection with the earlier appeal herein.

48. Texaco excepts to the order entered by the Hearing Examiner, pages 25-27.

The grounds are:

(i) The order is arbitrary and unreasonable; it prohibits Texaco from using any sales commission method of distributing TBA with any company although such method is not inherently illegal and only the particular plan involved in this proceeding has been erroneously adjudicated to be illegal; it purports to enjoin lawful business practices; and it seeks to enjoin practices and methods of competition not involved in this proceeding.

(ii) The order is vague, inconsistent and ambiguous insofar as it applies to Texaco's activities with respect to the marketing of TBA by resellers of Texaco's petroleum products.

Exceptions Filed Pursuant to Rule 4.21

(iii) The order is without support in the findings and conclusions or in the reliable, probative and substantial evidence of record.

(iv) The order is contrary to law and judicial precedent, contrary to constitutional right and power, in excess of statutory jurisdiction and authority under the Federal Trade Commission Act and the Administrative Procedure Act, and constitutes a deprivation of Texaco's rights and guarantees to due process of law under the Constitution of the United States.

The relevant and competent evidence in this record shows that the TBA sales commission contracts to which Texaco is a party embody a lawful method of competition adopted by Texaco to achieve legitimate business ends (see Examiner's Finding 8). The order purports to enjoin activities by Texaco which under the existing court decisions have been held to be entirely lawful. See *United States* v. *Standard Oil Co.*, 78 F. Supp. 850, 889-92 (S. D. Calif. 1948), *aff'd*, 337 U. S. 293 (1949); *United States* v. *Sun Oil Co.*, 176 F. Supp. 715 (E. D. Pa. 1959). See also *Ford Motor Co.* v. *United States*, 335 U. S. 303 (1948); *Miller Motors, Inc.* v. *Ford Motor Co.*, 149 F. Supp. 790 (M. D. N. C. 1957), *aff'd*, 252 F. 2d 441 (4th Cir. 1958); *Nelligan* v. *Ford Motor Co.*, 161 F. Supp. 738 (W. D. S. C. 1958), *aff'd*, 262 F. 2d 556 (4th Cir. 1959); (2011) *McElhenny Co.* v. *Western Auto Supply Co.*, 167 F. Supp. 949 (W. D. S. C. 1958), *aff'd*, 269 F. 2d 332 (4th Cir. 1959).

In any event, the order is much too broad. It may lend itself to a construction: (a) abridging freedom of speech and requiring Texaco to refrain from any and all connections with or participation in sales of TBA by others to Texaco service stations even to the point of precluding the recommendation by Texaco of TBA products to the dealers selling Texaco gasoline—and though Texaco would not receive any commission on such purchase and (b) requiring

Texaco, if it is to protect its legitimate and vital interest in having Texaco service stations carry TBA of good quality,[6] to enter into the TBA business directly. Thus the order is legislative in character and arbitrary insofar as it may be construed to bar Texaco from following one accepted and lawful business practice and requiring it to adopt another. It is in excess of the Commission's power. See, *e.g.*, *Federal Trade Comm'n* v. *Sinclair Refining Co.*, 261 U. S. 463 (1923); *Federal Trade Comm'n* v. *Curtis Publishing Co.*, 260 U. S. 568 (1923); *Federal Trade Comm'n* v. *Royal Milling Co.*, 288 U. S. 212 (1933); *Frank G. Shattuck Co.*, F. T. C. Dkt. 7743 (Initial Decision, Sept. 20, 1962).

The order fails to recognize Texaco's legitimate interest in the good will attached to its name and trademarks. Where the TBA products of the dealers' own independent choice are potentially dangerous, shoddy and of inferior quality or otherwise deleterious to Texaco's good will, Texaco should not be required to stand mute while its good will is lost and its name tarnished (see RX 93 A, C, G, H; App. 17).

(v) The order is unfair and potentially injurious to competition in that competitors of Texaco are not similarly restrained.

(vi) Insofar as the order against Goodrich affects Texaco it is likewise inappropriate and unlawful upon the applicable grounds stated in this Exception 48.

Further, the order is vague and ambiguous in raising the following possible questions of interpretation:

(i) Since "automotive * * * supplies" means nothing more than "automotive accessories," why are both terms needed?

6. See Texaco's Proposed Finding 15 (App. 17).

Exceptions Filed Pursuant to Rule 4.21

(ii) What, other than sales commissions, is embraced by "anything of value"?
(2012)

(iii) Since reference to Texaco in the expression "other than The Texas Company" must surely include its subsidiaries and affiliates, why isn't this expressed?

(iv) In paragraph 2, what is the purport of the word "indirectly" and what does it modify?

(v) What is the significance, if any, of the omission in paragraph 3 of the phrase "of any specified brand or brands" found in paragraph 4?

(vi) In view of the fact that it is customary and, indeed, often essential to use wholesalers and other middlemen in the course of distributing TBA to retailers, should the order not be clearer that distribution through such intermediate channels is embraced within the exception carved out of the order for promotion and sale by Texaco of TBA products which it may distribute or market?

Respectfully submitted,

AMZY B. STEED

Amzy B. Steed

JAMES O. SULLIVAN

James O. Sullivan

AND

ROYALL, KOEGEL & ROGERS

By FREDERICK W. P. LORENZEN

Frederick W. P. Lorenzen
Attorneys for Texaco Inc.

Dated: New York, New York
January 7, 1963.

Texaco's Motion to Disqualify Chairman Dixon

(February 18, 1963)

(2028)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

[SAME TITLE]

To: CHAIRMAN PAUL RAND DIXON and the
FEDERAL TRADE COMMISSION

COMES Now respondent Texaco Inc. (formerly known as The Texas Company), without prejudice to exception numbered 3 of the "Exceptions Filed Pursuant to Rule 4.21 on Behalf of Texaco, Inc." in this proceeding, and, for the reasons stated below, hereby is constrained respectfully to move that Chairman Paul Rand Dixon withdraw from participation in this proceeding, including the hearing and determination of the pending Review herein; and, in the alternative, that the Federal Trade Commission determine that Chairman Dixon be disqualified from such participation.

(2029) On July 25, 1961, Chairman Dixon made a speech, reported in a press release of this Commission, before the National Congress of Petroleum Retailers, Inc., in Denver, Colorado, which speech reflects personal bias and a pre-judgment in favor of the allegations of the instant complaint. The portion of the speech to which reference is hereby made is as follows:

> "Your problems are many, and many of them are the problems of the Federal Trade Commission, too; for the Commission is concerned with promoting fair competition. More particularly, many of your prob-

lems are ours because they arise from *practices prohibited* by two of the most important statutes administered by the Commission—discriminatory pricing, prohibited by the Robinson-Patman Act, and *other unfair acts, practices, and methods of competition, prohibited by the Federal Trade Commission Act.*

* * *

"*We at the Commission* are well aware of *the practices* which plague you and we have challenged their legality in many important cases.

"You know *the practices*—price fixing, price discrimination, and *overriding commissions on TBA.*

"You know the companies—Atlantic, *Texas,* Pure, Shell, Sun, Standard of Indiana, American, Goodyear, *Goodrich,* and *Firestone.*"* See Tr. 4437-40, 4497-99.

(2030) Participation in the present proceeding by Chairman Dixon in a quasi-judicial capacity, after an expression of the views just above quoted, constitutes a violation of the requirements of due process of law and of Section 5 of the Administrative Procedure Act, 5 U. S. C. §1004. The impropriety of such participation is demonstrated by the many cases cited in Texaco's Exceptions herein (p. 5). Indeed, such participation is directly contrary to the recent decision by the Court of Appeals for the District of Columbia Circuit in *Amos Treat & Co.* v. *Securities and Exchange Commission,* 306 F. 2d 260, in which the Court found a commissioner disqualified on a technical ground even though there was no charge of personal bias or prejudice. In reaching this result, the Court of Appeals made the following apposite statement (p. 267):

"Enough has been said to demonstrate the basis for our conclusion that an administrative hearing of such importance and vast potential consequences must

* Emphasis in quotation supplied.

be attended, not only with every element of fairness but with the very appearance of complete fairness. Only thus can the tribunal conducting a (2031) quasi-adjudicatory proceeding meet the basic requirement of due process."**

As an additional factual reason in support of this motion, Texaco Inc. shows that Chairman Dixon, before occupying his present position, served as Counsel and Staff Director of the Senate Anti-trust and Monopoly Sub-Committee which, during his tenure, held hearings involving testimony as to the relationship between gasoline service stations and their suppliers—a relationship which has been made an issue herein by findings below to which exceptions have been taken.

WHEREFORE respondent prays that its (2032) motion be granted.

Respectfully submitted,

Amzy B. Steed
James O. Sullivan
and

Royall, Koegel & Rogers
By: Frederick W. P. Lorenzen
Attorneys for Respondent
Texaco Inc.

Dated: New York, New York, February 18, 1963

** This Commission just one year ago expressed very similar views in *Modern Methods, Inc.* and *Harold Brooks,* Dkt. 7568, Feb. 19, 1962, CCH Trade Reg. Rep. ¶15,741. The complaint there was dismissed for lack of impartiality of the hearing examiner. In the course of the opinion, the Commission concluded that the examiner "irrespective of his actual state of mind * * * did not preserve that appearance of impartiality requisite to a fair hearing". "Indulgence in gratuitous and unguarded comment in the course of hearings and in the initial decision" were among the factors which the Commission concluded "reflected on his [examiner's] impartiality."

Order Denying Motion to Disqualify

(February 26, 1963)

(2033)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Commissioners:

Paul Rand Dixon, Chairman
Sigurd Anderson
Philip Elman
Everette MacIntyre
A. Leon Higginbotham, Jr.

[SAME TITLE]

Respondent Texaco, Inc., by motion filed February 18, 1963, having requested that Commissioner Dixon withdraw from participation in this proceeding, or, in the alternative, that the Commission determine that Commissioner Dixon be disqualified from such participation; and

The Commission having determined that respondent has failed to show justification for departure from the Commission's practice of treating disqualification as a matter primarily for determination by the individual concerned; and

Commissioner Dixon having filed with the Commission a memorandum denying the existence of any grounds for his disqualification from participation in this proceeding:

IT IS ORDERED that the motion directed to the Commission requesting that it disqualify Commissioner Dixon from participating in this proceeding, be, and it hereby is, denied.

By the Commission, Commissioner Dixon and Commissioner MacIntyre not participating.

Joseph W. Shea,
Secretary.

Issued: February 26, 1963

Memorandum of Chairman Dixon in Response to the Motion of Respondent Texaco, Inc., That He Withdraw From This Proceeding

(2034)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Commissioners:

Paul Rand Dixon, Chairman
Sigurd Anderson
Philip Elman
Everette MacIntyre
A. Leon Higginbotham, Jr.

[SAME TITLE]

The respondent Texaco, Inc., by motion filed February 18, 1963, has asked me to withdraw from further participation in this proceeding. The motion is alternatively directed to the Federal Trade Commission and asks that it "determine" that I be disqualified from such participation.

It is Texaco's contention that my speech of July 25, 1961, before the National Congress of Petroleum Retailers, Inc., "reflects personal bias and a pre-judgment in favor of the allegations of the instant complaint." The allegedly objectionable parts of the speech are quoted in the motion. As I read it and recall it, the only thought conveyed by the speech was that the Commission had challenged the legality of "overriding commissions" and certain other practices engaged in by the various oil and rubber companies, including respondent Texaco, Inc., and the B. F. Goodrich Company. By using the word "challenged," I indicated

only that the Commission had determined there was reason to believe that the practices were in violation (2035) of law. This determination is an absolute, statutory prerequisite to any complaint, is in fact declared in the first paragraph of the instant complaint, and I fail to see how my repetition of it in a speech indicates bias or prejudgment of the ultimate issue.

The complaint in this matter was issued long before I assumed my present position as a member of the Commission and my direct knowledge of the proceeding is limited to that obtained from a cursory reading of the initial pleadings. I am not possessed of sufficient knowledge to have formed any opinion, pro or con, with respect to the legality of the practices engaged in by these respondents. When the matter is ultimately presented to the Commission for decision, I will then apprize myself of the facts contained in the record and cast my vote in accordance therewith.

As I view it, bias or prejudgment are conditions of the mind, whose existence is known only to the person accused of harboring them. As the accused here, I can flatly say that I have not prejudged the issue in this matter and that I do not have any bias with respect thereto. Therefore, it is my decision not to withdraw from participation in this proceeding.

In view of the circumstances, I shall not participate in the Commission's deliberation and decision upon the respondent's motion to the Commission for a determination that I be disqualified from participation in this matter.

Paul Rand Dixon,
Commissioner.

• • •

Motion of Texaco Inc. for Leave to File Memorandum Amplifying Answers to Certain Questions Asked by Commissioners During Oral Argument

(April 11, 1963)

(2113)

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

[SAME TITLE]

Texaco Inc., one of the respondents herein, respectfully moves the Commission for leave to file the annexed memorandum amplifying answers made by Texaco's counsel to certain questions posed by various Commissioners during the course of oral argument.

As stated in detail in the annexed memorandum, the amplification serves to afford the Commission a more complete answer to certain important questions relating to the scope of the issues on review.

Dated: April 11, 1963.

AMZY B. STEED
JAMES O. SULLIVAN
135 East 42nd Street
New York 17, New York

and

ROYALL, KOEGEL & ROGERS
100 Broadway
New York 5, New York
Attorneys for Texaco Inc.

By Amzy B. Steed

Memorandum of Texaco Inc. Amplifying Answers to Certain Questions Asked by Commissioners During Oral Argument

(April 11, 1963)

(2114)

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

DOCKET No. 6485

IN THE MATTER

of

THE B. F. GOODRICH COMPANY

and

THE TEXAS COMPANY,

CORPORATIONS

AMZY B. STEED
JAMES O. SULLIVAN
135 East 42nd Street
New York 17, New York

and

ROYALL, KOEGEL & ROGERS
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New York 5, New York
Attorneys for Texaco Inc.

Memorandum of Texaco Inc.
Amplifying Answers to Certain Questions
Asked by Commissioners During Oral Argument

(2115)

In the light of Texaco's contention that the remand proceedings were a nullity, some members of the Commission inquired during oral argument about the propriety of reaching a new decision based solely upon the pre-remand record.

Texaco did not anticipate that the Commission would ever consider this possibility not only because it had not been urged in Complaint Counsel's brief, but more importantly, it would undermine confidence in the authority of the Commission's own decisions were it so lightly to regard its own prior work in connection with the very same record without a single intervening change of fact or law. Equally, it would involve a repudiation of the Commission's solemn position regarding this proceeding before the federal courts—a position upon which the courts relied in disposing of respondents' efforts to prevent the remand. In short and without prejudice to its position that nothing in the pre-remand record is now properly before the Commission, Texaco is convinced that a brief review of the unique history of this litigation will show that due process and fair play cannot be satisfied if the standards and principles heretofore consistently followed in this case are suddenly changed and abrogated. The public interest in maintenance of the traditional notions of justice—and in preserving the integrity of the administrative agencies in their dealings with the courts and the public—is paramount if we are to have a government of laws and not of men. Because of the overriding significance of the foregoing, Texaco believes that it would be remiss in its duty to the Commission if it did not amplify the answers given by its counsel on oral argument, which, though embracing

these propositions, were limited both by time and by the conviction, for the reasons detailed below, that under the circumstances the Commission could not properly consider reviewing again the pre-remand record.[1]

1. Texaco's insistence that it would be improper for the Commission to base a new decision upon the old record does not mean that Texaco believes that the old record would support a finding adverse to Texaco. On the contrary, it has consistently maintained (as, indeed, the Commission found) that the evidence was insufficient. For example, the record would not support a finding of anti-competitive effects based upon a theory of so-called economic "paper" coercion resulting from Texaco's mere lease relationship with its lessee dealers (which was the alleged "coercion" alluded to and said to exist by Complaint Counsel in response to one of the Commission's questions at the argument). If this were so, every landlord-tenant relationship of whatever nature is legally suspect. Or, put another way, and even assuming, *arguendo*, that such relationship creates a setting of potential abuse (which Texaco emphatically disclaims), this would not be unlawful. The mere possibility of abuse cannot make the possession of economic power unlawful. Otherwise, every disparity of economic strength would be vulnerable. Fortunately, in our system of jurisprudence, findings of illegality cannot rest on mere supposition without regard to actual behavior. So also, the speciousness of the "paper" coercion argument is even more nakedly exposed when it is realized that only ⅓ of the more than 38,000 Texaco dealers lease their stations from Texaco (CX 118). We mention this because one could erroneously assume from Complaint Counsel's argument that all Texaco dealers are lessee dealers. Furthermore, after the sales commission plan had been in operation for more than 15 years, it is uncontradicted that the average sales of sponsored TBA to lessee stations represented only a small portion of the total TBA throughput of such stations (CX 120, 121, 211, RX 84D, App. pp. 58-64). Also, the uncontradicted evidence demonstrates that more than 70% of all Texaco dealers do not regularly purchase any tires and tubes under the sales commission contracts, and more than 80% of such dealers do not regularly purchase batteries or accessories (App. 65-68). Furthermore, not a single Texaco dealer purchased sponsored TBA exclusively. We reiterate that findings cannot be made upon mere supposition but can only be made upon proven facts. Likewise, Texaco eschews any notion that the TBA plan could be *per se* illegal

Memorandum of Texaco Inc.
Amplifying Answers to Certain Questions
Asked by Commissioners During Oral Argument

(2116) . During the oral argument, Complaint Counsel advanced the novel and untenable theory—contrary, as shown below, to that which Commission Counsel previously and strenuously argued before the federal courts—that the Commission, in its unanimous March 9, 1961 opinion and accompanying remand order, did not find the evidence on competitive effects insufficient. This is an incredible reading of the Commission's opinion wherein the Commission held (p. 4) that the issue in the case is the legality of the sales commission plan used by respondents and that resolution of this issue depended upon the competitive effects of the plan. Having defined the problem, the Commission concluded that the record contained insufficient evidence of competitive effects (Opinion, p. 10). Therefore, it remanded the case for the specific purpose of receiving evidence "concerning the competitive effects of the respondents' practices" and the Hearing Examiner was directed to indicate any changes he wished to make in his initial decision "in the light thereof" (Remand Order, March 9, 1961).

On July 7, 1961, Texaco and Goodrich brought an action in the United States District Court for the District of Columbia to bar the Commission from pursuing such remand as unwarranted in law or fact. (Civ. Action No. 2219-61). In defense of that action, Commission (2117) Counsel "protested too much" for the opposite to have been asserted at the April 4th (and last) oral argument in this proceeding.

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simply because Texaco leases service stations to some dealers who may or may not purchase sponsored TBA which theory of *per se* illegality has, indeed, already been disavowed by the Commission both in this case and in the other two T. B. A. cases (Docket Nos. 6486 and 6487).

Memorandum of Texaco Inc.
Amplifying Answers to Certain Questions
Asked by Commissioners During Oral Argument

Counsel for the Commission in the federal action stated that the Commission "needed additional evidence in order to decide the issues presented."[2] They contended that the Commission should not be foreclosed from taking further evidence on which to base an "'informed determination.'"[3]

Likewise, counsel for the Commission plainly advised the Court that the remand was not to be a retrial of what had gone before, stating:

> "On its face, the Commission's opinion shows that its remand is not seeking a retrial of matters already tried but rather envisions supplementary evidence on what it considered to be significant facts in any assessment of the competitive effects of the sales commission agreements, namely, the effects upon competing TBA suppliers stemming solely from this method of distribution."[4]

They told the courts, in addition, that the issue to be heard on the remand not only was "highly complex and complicated," but that it was "crucial" and "dispositive":

> "Here, the remand involves developing additional evidence on the crucial issue, one that will be dispositive of the proceeding; * * *

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2. Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Motion for Preliminary Injunction, p. 26, served August 28, 1961.

3. *Id.* at 28. See also Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment, p. 30, filed April 30, 1962.

4. Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment, p. 21, filed April 30, 1962.

Memorandum of Texaco Inc.
Amplifying Answers to Certain Questions
Asked by Commissioners During Oral Argument

"Here the remand involves a highly complex and complicated question in which it is sought to determine the probable competitive effects of the sales commission method of distributing TBA; * * *"[5]

The Commission, in order to persuade the courts that it was entitled to conduct the remand, represented that the evidence to be (2118) adduced thereat was vital to the appropriate disposition of the proceeding. Had counsel for the Commission represented otherwise, the Court undoubtedly would have enjoined the remand because there would have been no basis for pursuing it and no reason for not having disposed of the proceeding without a remand.

The position of the Commission is reflected in the findings of the District Court in support of its Order of June 19, 1962. The Court ruled that Texaco and Goodrich would be entitled to relief unless the contemplated remand were completed by October 2, 1962. The Court expressly found that, on March 9, 1961, "*the Commission, having found the evidence before it inadequate to show a violation of Section 5 of the Federal Trade Commission Act, issued an order remanding the Proceeding to the Hearing Examiner,* * * *." (Emphasis supplied.) Thus, in permitting the remand proceeding to go forward, the Court relied on the government's representations that the Commission did not have before it sufficient evidence to support the charge.

It would violate every fundamental and constitutional concept of fair play if the Commission were now to say that the prior unanimous Commission did not properly evaluate the record, that the evidence was sufficient all along, that the issue remanded was uncomplicated and not dispositive and that the remand was entirely unnecessary

5. *Id.* at 17.

and just a two-year time-waster. Needless to say, such a position would also collide head-on with Section 6(a) of the Administrative Procedure Act which requires that "Every agency shall proceed with reasonable dispatch to conclude any matter presented to it."

There can be no question but that, in the two years that have elapsed since the remand order, all the parties involved—the Commission, its representatives and the federal courts—have treated the pre-remand record as insufficient to sustain the complaint. This was the reason for the remand; and it was the premise upon which the courts acted in permitting the remand hearings to go forward under a deadline aimed at requiring the case "to proceed with reasonable dispatch."[6]

We respectfully submit that the Commission, having kept this case alive for more than two years since its remand order by persuading (2119) the federal courts that it should not have to decide the matter on an insufficient record, cannot now repudiate that position. In those two years, not once did the Commission suggest to respondents or the courts that its "second bite at the apple" would involve a reappraisal of the prior record either by it or by the Hearing Examiner in the absence of any "further evidence" on the issue which it told the courts was "complex," "complicated," "crucial" and "dispositive." Respondents were not given notice that they should come to the remand prepared to meet the contention that the pre-remand record was sufficient—indeed, they were told just the opposite.

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6. If this were not so, and if the remand hearing was unnecessary, why did the Commission so vigorously contest Texaco's efforts—indeed, to the United States Supreme Court—to stop the remand proceeding.

Memorandum of Texaco Inc.
Amplifying Answers to Certain Questions
Asked by Commissioners During Oral Argument

We do not believe that it is an acceptable premise that the Commission in this case can simply ignore and disavow its representation to the courts and respondents. Nor can we agree that under the guise of "public interest" any action may be taken however lacking in fair play and due process. In short, we contend that a true and faithful adherence to the public interest—giving to it the real significance it deserves—requires the Commission to confine its review to the sole issue of whether the remand added competent and substantial evidence which was lacking before. Such a review will compel the answer that the remand added nothing and, this being so, an order of dismissal should be entered with "reasonable dispatch" as required by Section 6(a) of the Administrative Procedure Act.

Respectfully submitted,

AMZY B. STEED
Amzy B. Steed

JAMES O. SULLIVAN
James O. Sullivan

and

ROYALL, KOEGEL & ROGERS

By FREDERICK W. P. LORENZEN
Frederick W. P. Lorenzen
Attorneys for Texaco Inc.

Dated: New York, New York
April 11, 1963

Decision and Order

(April 15, 1963)

(2120)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Commissioners:

Paul Rand Dixon, Chairman
Sigurd Anderson
Philip Elman
Everette MacIntyre
A. Leon Higginbotham, Jr.

[SAME TITLE]

This matter is again before the Commission on respondents' appeal from the revised initial decision of the hearing examiner issued September 24, 1962.

Respondents contend that the tables, surveys, and matters officially noticed by the examiner on remand were improperly admitted both because they are inappropriate objects for official notice and because respondents were afforded inadequate opportunity to rebut them.

It is not necessary to pass upon the correctness of these contentions, since the Commission excludes from its present decision any reliance upon the challenged evidence. It finds that the other evidence of record amply supports the conclusions and the order of the hearing examiner. The legal principles relevant to this decision need not be reexamined here because they are set forth at length in the opinions of the Commission in *Goodyear Tire & Rubber Co., et al.*, Docket 6486, March 9, 1961, and *Firestone Tire & Rubber Co., et al.*, Docket 6487, March 9, 1961. Accordingly,

Decision and Order

IT IS ORDERED that the findings of fact numbered 32, 33 and 34 and conclusion number 7 of the revised initial decision be, and they hereby are, stricken.

(2121) IT IS FURTHER ORDERED that, as so modified, the initial decision and order be, and they hereby are, adopted as the decision and order of the Commission.

IT IS FURTHER ORDERED that respondents B. F. Goodrich Co. and Texaco, Inc., shall, within sixty (60) days after service upon them of this order file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

By the Commission, Commissioner Anderson not concurring for the reason that the command of the remand order of March 9, 1961, has not been met and complied with; and Commissioner MacIntyre not participating.

Joseph W. Shea,
Secretary

Issued: April 15, 1963

Excerpts from Testimony

(2129) Hearing Examiner Kolb: The initial hearing in Docket 6485, in the matter of B. F. Goodrich Company, et al, is now open. This is the initial hearing of the record in the present proceeding.

A pre-trial conference has been held and certain admissions or agreements as to facts have been entered into by the respondents. I will read these into the record as I have them here, subject to any change which will occur.

"Both the respondents B. F. Goodrich Company and the Texas Company admit the following:

"One: Respondent, The B. F. Goodrich Company, hereinafter sometimes referred to as 'Goodrich', is a corporation organized, existing and doing business under the laws of the State of New York, with its principal office and place of business located at 500 Main Street, Akron, Ohio.

"Respondent, The Texas Company, sometimes hereinafter referred to as 'Texas', is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and place of business located at 135 East 42nd Street, New York 17, New York.

"Two: Goodrich, one of the four leading manufacturers of rubber products in the United States, is engaged in the manufacture and sale of a great variety of rubber and associated products, including tires and inner tubes.

(2130) "It is also engaged in the purchase, resale and distribution of batteries, automotive parts and accessories, and certain other merchandise. Goodrich sells its various products directly to the consuming public through 489 company operated stores, and to other retailers and wholesalers having places of business located in the various States of the United States. Its total net sales in 1954 were more than one-half billion dollars.

"Certain of Goodrich's said products, namely, tires, inner tubes, batteries and automotive parts accessories and

supplies are known in the trade as 'TBA' products (an abbreviation for tires, batteries and accessories) and will hereinafter be so referred to in this proceeding.

"Three: Texas is a large producer and distributor of petroleum products. Directly or through its subsidiaries or affiliated companies it has engaged and is now engaged in substantially all branches of the petroleum industry. It produces crude oil from its wells, cracks and refines gasoline, and refines and produces lubricants and a wide range of other petroleum products. Sales of some or all of such products are made to various customers, including petroleum wholesalers (some of which are herein referred to as 'distributors') and service stations. In 1954 its net sales totaled more than one and a half billion dollars. In certain cases under written contracts and memoranda, Texas promotes the sale of Goodrich TBA products.

(2131) "Four: In the course and conduct of its said business, B. F. Goodrich is now and for many years has been engaged in commerce, as 'commerce' is defined in the Federal Trade Commission Act, in that it ships certain products, including said TBA products, or causes them to be shipped from the States in which said products are manufactured or warehoused, to purchasers thereof located in other States of the United States and the District of Columbia. Texas ships some petroleum products from some but not all States in which they are produced, refined or stored to purchasers or dealers located in some other States of the United States and in the District of Columbia.

"Texas admits the first eight numbered paragraphs of the Proposed Stipulation, except that we will not admit the first sentence of paragraph numbered '4', but will admit in lieu thereof:

> 'B. F. Goodrich ships certain TBA products, or causes them to be shipped from the States in which said products are manufactured or warehoused, to

purchasers thereof located in other States of the United States and the District of Columbia. Texas ships some petroleum products from some but not all States in which they are produced, refined or stored to purchasers or dealers located in some other States of the United States and in the District of Columbia.'

(2132) "Five: Goodrich is now and for many years has been in competition with others in selling TBA products in commerce. In certain cases, under written contracts and memoranda, Texas is now and for many years has been engaged in promoting the sale of Goodrich TBA products.

"Six: Goodrich sells TBA products directly and through distributors to many classes of customers, including service stations who purchase for resale to consumers for replacement use in their automobiles. Service stations, by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They constitute a large market for TBA products.

"Texas petroleum products are marketed by approximately 38,000 petroleum outlets which buy such products either directly from Texas or from consignees of Texas or from distributors of products of Texas. In addition to petroleum products, a number of these outlets sell TBA products.

"Seven: There are a large number of service stations and distributors which sell principally the petroleum products of The Texas Company. The Texas Company, under written contracts and memoranda promotes the sale of said Goodrich TBA products to some service stations and distributors handling products of Texas, and Texas receives a sales commission thereunder. The service stations and distributors do not receive any part of the sales commission paid to Texas by (2133) Goodrich.

"Eight: Goodrich and its distributors made sales, covered by said written contracts and memoranda amounting approximately to $11,400,000 in 1951 and $12,700,000 in 1952, on which Goodrich paid Texas commissions of approximately $930,000 and $1,090,000 respectively for those years. (Figures to be supplied and agreed on by the parties promptly.)"

Mr. Royall: It should appear in the record that this admission is solely for the purpose of the present proceeding and we reserve all objections as to materiality and relevancy. Is that correct?

Hearing Examiner Kolb: That is correct.

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(2212) MAURICE A. WOLFE was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

(2213) *Direct examination by Mr. Dias:*

Q. Will you state your full name and position with the Texas Company? A. Maurice A. Wolfe, special representative, tire, battery and accessory sales.

Q. Is that home office or field? A. Home office.

Q. What are your duties, Mr. Wolfe? A. It is my responsibility to develop plans and programs for increasing TBA through Texaco accounts; to coordinate those plans with the plans of the tire companies; to evaluate from our sales reports the activities of the TBA sales; to keep contact with our field in trying to evaluate the effectiveness of our plans and programs; and to gain any new ideas for plans and programs. I also maintain contact with the tire company personnel and headquarters to try to coordinate our plans and their plans in so far as it pertains to the sale of TBA merchandise in the field.

Maurice A. Wolfe, for Commission—Direct

Q. Are you concerned with the program as it relates to only Goodrich or both rubber companies? A. Both.

Mr. Royall: Same objection.
Mr. Barton: Same for me.
Hearing Examiner Kolb: Objection overruled.

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(2215) Q. Then from 1940 on you were concerned chiefly with TBA products? A. Yes, sir.

Q. And in that time, or during that time, you did not —or did you devote your time or efforts towards any one company, any one rubber company, or was it the two that you combined in the TBA program?

Mr. Royall: Same objection.
Mr. Barton: Same objection.
Hearing Examiner Kolb: Objection overruled.

A. I worked with both companies.

By Mr. Dias:

Q. With both companies. In compiling statistics did you consider both companies? A. Yes.

Mr. Royall: Yes.
Mr. Barton: May we have a continuing objection on that your Honor rather than have to repeat it every time?
Hearing Examiner Kolb: You may have a continuing objection.
Mr. Royall: Same for us.

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(2216) Q. In the territorial offices, Mr. Wolfe, who is responsible for the TBA program? I mean, what is the title of the person? A. Assistant manager (sales promotion).

Q. Would you repeat that? Assistant manager what? A. Sales promotion.

Q. How many personnel did you have in the Atlanta office involved in the TBA program? A. In the office itself?

Q. Yes. A. We have an assistant manager, sales promotion, and clerk, TBA promotion, which is—

Q. One clerk? A. One clerk, which handles the reports. We have a representative, TBA promotion, that works out of the division office covering the entire division.

Q. What are his duties? A. Exclusively on TBA sales, promotion of TBA sales.

Q. Is he the only one that tries to sell in the field? Is that what you are saying? A. No.

Q. Go on a minute and let me come back to that. What other personnel do you have in the territorial office? You have so far an assistant manager, sales promotion; one clerk, TBA (2217) promotion; representative, TBA promotion. A. That is in the division.

Q. Is Atlanta a division? A. Yes.

Q. Who else do you have in the division? A. There is no one else that works exclusively on TBA.

Q. How about the sales force? Do all salesmen of the Texas Company also promote the sale of TBA products? A. Yes.

Q. How many salesmen are usually in a division office? A. That varies.

Q. How many did you have at Atlanta? A. I don't recall the total number.

Q. The division is a step lower than the territory, is that correct? A. Yes.

Q. Do you know anything about the territorial offices? A. Yes.

Q. Do you know what personnel are involved in TBA sales in the territory offices? A. The assistant manager, sales promotion, and I suppose to a degree his office per-

sonnel that handles our sales promotional work would be included in there, too.

Q. How large a force would that be? A. That varies.

(2218) Q. From what? A. Depending on the requirements of the territory.

Q. Can you give us some round numbers? Two, three, five, a dozen people maybe? A. That I am not familiar with in total number.

Q. What other people, or what other personnel are directly connected with the TBA program in the territories? A. Our territorial manager of course.

Q. Yes, you have given me him. For example, in the division you had a clerk and then a representative, TBA program man. What about the territory? A. We do not have those in the territory.

Q. So that the only executive personnel actually is the assistant manager, sales promotion? A. And the manager.

Q. Territorial manager? A. Territorial manager, of course is interested in it, too.

Q. Getting back to that representative, TBA program, is he sort of a liaison man? What does he do? A. He coordinates in the field the programs of the Texas Company and the tire companies.

Q. In the field, when you say in the field, what do you mean? In the sales area? A. In the sales area.

Q. And what is the normal sales area of a division? How is (2219) that made up? A. Well, as a rule I believe that the division sales area is by state lines. Some are not. The Atlanta division where I was working at that time covered four states.

Q. So the representative then would be responsible for coordinating the work among those four states and his division office. Is that correct? A. He coordinates the efforts in the four states.

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(2223) *By Mr. Dias:*

Q. Mr. Wolfe, I hand you Commission exhibit 41. Will you study that a few minutes?

Will you tell us what that document is? A. That is a section in a manual of procedures that we work with in the handling of forms and records pertaining to the TBA sales as outlined.

Q. Is that the current procedure, Mr. Wolfe? A. The current procedure?

Q. Yes, sir.

In other words, is that still the effective document? Have there been any revisions on it that you know of? A. Yes. There have been revisions.

Q. There have? Can you tell us what was the date that that was in effect? A. This was in effect in August '51, I believe was the last print, for most of these sheets.

Q. Do you know when the amendments went into effect, or an amendment? Was the whole thing amended? A. Well, currently our TBA records in the division offices are prepared on business machines, rather than manually, as outlined in here.

Q. Can you think of any other amendments to that manual? A. No, not at the moment.

Q. Will you refer to pages 14 and 15, Mr. Wolfe, paragraphs (2224) a and b. In sales by the rubber companies to Texaco stations, I take it stations can qualify for quantity discount. Is that correct? A. Yes.

* * *

(2231) (The document heretofore marked Commission's Exhibit for identification 70-A through D, was received in evidence.)

By Mr. Dias:

Q. Will you look at this document, Mr. Wolfe? You refer in there, Mr. Wolfe, to a bald selling ratio in the last paragraph of your letter. Do you see that?

Mr. Royall: What page?

Mr. Dias: That is in the second full paragraph on Exhibit 70-C.

By Mr. Dias:

Q. The question is, Mr. Wolfe, what are those recommended balanced selling ratios? What does that mean? A. That means the ratio of battery auto supply sales to total TBA sales.

Q. The ratio of battery auto— A. Auto supply sales.

Q. Battery— A. Battery and accessory sales.

Q. Battery and accessory sales? A. To total TBA.

Q. That is recommended. Who recommends that? (2232) A. Well, the profit computer referred to is a form prepared for The Texas Company which sets out potential business dependent on the gasoline business being done at a station.

Q. Is it a ratio of sales of TBA products to gasoline sales? Is that what you mean? A. That is used in arriving at the recommended ratios.

Q. Can you explain that a little more fully? Is it a question of so many gallons of gasoline, sales of so many gallons of gasoline should result in the sales of so many dollars worth of TBA products? Is that the idea? A. Yes.

Q. Did you say that Texas made up this profit computer? Is that correct? A. No. I said it was made up for The Texas Company.

Q. By whom? A. I don't know. I think Chek Chart Corporation; I am not sure.

Q. Chek what? A. Chek Chart Corporation.

Q. And then the balanced selling ratio—tell me what is that balanced selling ratio? Batteries and accessories to total TBA sales? A. TBA.

Q. Is that figured also from this profit computer? A. It is included in the profit—

(2233) Q. It is included in it. Does it only refer to batteries or does it also show accessories to tires and batteries or— A. Actual ratio is not shown in the profit computer.

Q. It is not? How about the ratio of sales of TBA products to sales of gasoline? Is that shown in the profit computer? A. Yes, it is related in there.

• • •

Q. Is that the standard that Texas goes by, standard of sales? A. That is a guide.

Q. In determining how many dollars worth of TBA any given station, for example, should sell? A. Yes.

Q. In relation to the number of gallons of gasoline they sell? Is that correct? A. Yes.

Q. On Exhibit 70-B there are some addresses. Will you tell us who they are, please? A. Those were assistant territorial managers, sales promotion.

Q. And is that one in each territory? A. One in each territory.

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Cross examination by Mr. Royall:

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(2246) Q. I notice that the chart which you have identified has on the outside of it "For Texaco Dealers." Do you know whether or not this chart was prepared for the petroleum industry generally? A. Yes, it was.

Q. And the fact that it was directed to the Texas Company dealers is merely something imprinted on there. Is that right? A. That's right.

Q. Are the charts and computations made by Chek Chart generally accepted in the petroleum industry as being sound? A. Yes. They are accepted as an authority.

Q. Do you know whether or not its computations are used and in instances illustrated by the United States Department of Commerce in their analysis of the petroleum industry? A. I don't know, but I think—

Mr. Dias: That is enough. You don't know.

By Mr. Royall:

Q. I believe the actual publication of them is by the Shaw Publishing Company. Is that an affiliated or associated organization with Chek Chart itself? A. Yes.

* * *

(2247) Q. Was the investigation on the basis of this chart made in any part by Texas Company? A. No, sir.

Q. Was it an independent investigation of Chek Chart? A. Yes.

* * *

(2248) Q. Does it appear and do you know that this is based on averages? A. That is.

Q. It is based on averages.

Now, Mr. Wolfe, you were asked about certain ratios between different types of TBA. And I believe you replied that those ratios were shown by this information. Does it also show the ratio of TBA as a whole to a definite quantity of gasoline, say 10,000 or some other thousand gallons? A. Yes.

Q. And in addition to TBA does the computation based on averages apply also to lubricants, labor, and other matters? A. Yes.

Q. In other words, it is true, is it not, that this computation was not directed to TBA alone but to all the services

and products of the petroleum stations, was it not? A. Yes.

Q. And is that what is meant by the term "balanced selling ratio"? A. It is.

Q. Does this figure here, relating to TBA, relate to all TBA whether sponsored or unsponsored, whether Goodrich or something else? A. It does.

(2249) Q. And the average? A. The average station.

Q. And is it from this computer and based on it that you stated in your letter of March 12, and the enclosure in it, and stated in the next to the last paragraph of the enclosure that "the C type account should have averaged approximately $2,200 per station"? A. Yes, sir.

Q. And is it also true that the Goodrich TBA averaged only $720 per station? A. Yes.

* * *

Redirect examination by Mr. Dias:

* * *

(2258) Q. Mr. Wolfe, I would like you to take a look at Exhibit 24-A, and notice the date. A. Yes, sir.

Q. Where were you employed at that time, in 1951? Were you in the home office? A. Yes.

Q. Where? And on these figures, the 30 percent increase on shipments of replacement tires, you can testify that they are referring to units in that instance? A. Yes.

Q. And on that 56 percent increase, that refers to dollar volume? A. Yes, sir.

Q. Exhibit 28-A, referring to form 1213. Was it your testimony that that form only went to the home office? Is that correct? A. It goes to our division management, territorial management, and home office.

Q. Where is it made up? A. In the division office.

Q. So it goes from the division to territorial to home, is that correct? A. Yes.

Q. On document 41 relative to the various forms, you mentioned (2259) that you are now using the IBM machine system? A. Yes.

Q. It is my understanding that you also testified that it does not change the accounting procedures as such, but only the fact that you do it mechanically rather than manually, is that correct? You still compile the same type of statistics that are outlined in those forms and for the same purposes? A. Not completely.

Q. Do they vary in any material way? If so, give us some examples of it. A. Under the old system we posted the purchases on an S-40 card.

Q. What sort of purchases? A. TBA purchases.

Q. By whom? A. By dealers, consignees, and distributors; all Texaco accounts reported to us by the tire companies.

Under the new system those purchases are not posted on a card but are recorded on a form by the business machine.

Q. So that you have the same information but you have it in a different form. Isn't that so? A. That's right.

Q. In other words, fundamentally there is no change in that? You still have the same kind of statistical information but now you have it on a card where as heretofore you had it on a (2260) form? A. The other way around.

Q. How about the other forms that they mention here? What about form S-237? A. We still have that form in use.

Q. Why don't you go through these? You just described S-40. A. We have what is called an S-40 now. It only carries the name of the account and the location of the account. In other words, no TBA sales figures are on the S-40.

Q. Do you have— A. We have an S-40 card as such today.

Q. What form has now superseded that? What IBM form has now superseded that to do the same job that that

S-40 did? Do you have anything of that sort? A. We still have an S-40 card on which we keep the name of the account and the address. But the sales information is now kept on S-79, made in the machine.

Q. And you have had S-79s all along anyway, haven't you? A. Yes.

Q. So the information formerly on the S-40 or some of it is now on the S-79? A. Yes.

Q. And in machine form? A. Yes.

Q. Are there any other forms here? (2261) A. S-47 we still have.

Q. Is there any IBM counterpart of that S-47? A. The present form S-47 is prepared on the IBM machine, rather than manually.

Q. But the same type information? A. The same type information.

Q. S-79 you have already explained, have you not? A. Yes. We still have the S-79. It is prepared now on the IBM machine.

Q. But contains the same information that is set forth in this manual, is that correct? A. Yes.

Q. Now getting to the profit computer, were Texas stations included in that report, do you know? A. What report?

Q. In preparing this profit computer, did this company include Texas stations? A. I do not know.

Q. Did the Texas Company furnish any data on that company? A. Not to my knowledge.

Q. What is the extent of your knowledge of the makeup of that chart, Mr. Wolfe? Do you know anything about how it is computed, how it is made up, where the figures come from? A. All I know is that this company is a recognized authority on potentials and throughout of service stations, among other (2262) type accounts.

Q. How did they get these figures, do you know? A. No, I don't know exactly how they arrived at them. It is based on averages, I understand.

Q. From whom? Texas Company submitted no figures that you know of? A. They developed them in their own way. I don't know how.

Q. You don't have any idea of how they develop them. Then I take it that you wouldn't know the basis for the figures in the profit computer, how many stations are included in the average? A. No.

Q. Nor where the stations are located? A. No.

Mr. Dias: That is all, your Honor.

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(2263) CHARLES R. FROHLIN was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and position for the record? (2264) A. Charles R. Frohlin.

Q. And what is your title and position and where located? A. I am Division Manager, New York Division.

Q. Are your offices in New York? A. Yes, sir.

Q. How long have you been with the company, Mr. Frohlin? A. Twenty-six years.

Q. How long have you been in your present position? A. Since May 1, 1956.

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(2265) Q. Will you identify this letter, please (handing)? A. Yes, sir.

Q. You wrote that letter? A. I did.

Q. Is that your signature? Who were the zone managers? I mean how many zone managers were there in that division? A. At that time we had 23.

Q. Do all of those initials indicate zone manager or is this further distribution? A. This is further distribution of the letter.

Q. Where else would that have gone to, generally speaking? Not to each and every one? A. It would only go to the zone managers, plus these people.

Q. What type of people would they be? (2266) A. For example, "RBA" is Mr. Allen, Division Manager. These other people along here are staff members.

Q. Division staff members? A. Division staff members.

Q. And this letter was sent to each and all of those indicated, is that correct? A. Yes, sir.

Q. In response to the third paragraph of that letter did you receive replies in response to that third paragraph, do you recall? A. Yes.

Q. From all necessary parties? In other words, each zone? The zone managers were expected to answer to that letter, is that correct? A. From those zone managers who were expected to answer.

Q. Were there some that didn't have to answer? A. There were some who perhaps didn't have consignees.

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Cross examination by Mr. Royall:

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(2268) Q. Mr. Frohlin, your normal duties and customary duties are personnel. What do they deal with? A. Primarily the giving of raises, for example; proper office force in the office.

Q. And as to real estate? A. It is my duty to recommend to management first of all the leasing of new properties.

Q. What do you mean by leasing? Leasing from whom to whom? (2269) A. Leasing from a property owner to the Texas Company.

Q. Did that activity embrace leasing from the Texas Company to a service station? A. No, sir.

Q. And this letter was written with reference to leases to the Texas Company, is that correct? A. Yes, sir.

Q. You often lease stations, either lease the ground or lease the ground and building, from third persons? A. Yes, sir.

Q. And then you lease them back to a service operator. Is that correct? A. Correct.

Q. And your letter related to the first of these, that is, the leasing from an owner to the Texas Company? A. The Texas Company.

Q. As to what types of property, or service stations, which were leased to the company, were you interested? A. Leases on property wherein the company erected facilities; leases on property and buildings.

Q. And property which the company after it was leased to the company did what with? A. Leased to an operator.

Q. You referred in the hearing on this letter to leased accounts.

(2270) Mr. Dias: Would you show him the one that has been offered, sir?

(2271) *By Mr. Royall:*

Q. You refer in the heading of the letter above the body of it to "leased dealers accounts" and in the first paragraph to "leased accounts". As I understand it from your testimony that means that you are interested in the leases to the company of property which was later leased to service stations. A. Yes, sir.

Q. And that is what those two terms mean in the first paragraph? A. Yes, sir.

Q. You say some of the stations which you leased the company built the station on, is that right? A. We leased the property.

Q. And built the station? A. Yes, sir.

Q. And that is designated as one class of company-owned station? A. Right.

Q. You spoke in this letter that the effect of this information is a strong point on renewing leases. What leases were you referring to? A. The lease of the Texas Company and the property owner.

Q. To Texas Company? A. Yes sir, to the Texas Company.

Q. Was this information which you obtained used for any other (2272) purpose except to consider the advisability of the Texas Company taking leases to itself on property? A. No, sir.

Q. And that was your function—that was within your function as being in charge of real estate? A. Yes, sir.

Q. Do you know for what purpose—that is, whether it was for a statistical purpose or otherwise that that information was obtained? A. Statistical.

Q. Yes. And did your inquiry have any connection at all with Texas Company's relation with the service stations or its dealers? A. No, sir.

Q. I believe you have already testified it was not used for that purpose in any way. A. Right, sir.

Mr. Royall: That is all, sir.

* * *

(2274) Q. Is it or is it not a fact, Mr. Frohlin, that before you can determine whether you want to cancel a lease to the Texas Company you must have information to determine that? Is that correct, sir? A. Yes, sir.

Q. And this letter of yours was for the purpose of determining whether a further renewal was desirable. That was one of the circumstances, isn't that correct, sir? A. Right.

Q. If the premises were satisfactory and capable of producing revenue, would you recommend the cancellation or non-renewal of the lease? A. No, sir.

Q. Was that the criterion you applied in making your recommendations? A. Yes, sir.

(2275) Q. And in order to determine that you had to know the possibilities and the demonstrated activity of the property as one of the elements, is that right, sir? A. Yes, sir.

Q. Were there other elements? A. The—

Q. Prospects for the future? A. Prospects for the future; change in roads, perhaps, or something like that.

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(2277) (The paper referred to, heretofore marked Commission's Exhibit No. 31 for identification, was received in evidence.)

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(2278) BEN HALSELL was called as a witness for the Commission, and first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Mr. Halsell, will you state your full name and title and where located in the Texas organization? A. My last name is Halsell; first name Ben; Manager of Merchandising, home office.

Q. What are your duties as Manager of Merchandising? A. My responsibility is to find ways and means of assisting Texaco dealers increase their profits, become better businessmen, in the process of which they increase their sales of petroleum products, TBA materials, and allied products and services.

Q. Are you primarily concerned with the TBA purchases or overall sales? A. Both, at the retail level.

Ben Halsell, for Commission—Cross

Q. Primarily is it one or the other? A. Primarily the entire merchandising operation.

Q. At the retail level? A. Yes.

Q. How long have you been in that position? (2279) A. January 1, 1956.

Q. How long have you been with the company in all, Mr. Halsell? A. Since August 13, 1926. Thirty years.

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(2280) Q. As zone manager, how does the zone feature in this scheme of organization? A. Zone is comprised of a manager and within the zone there are salesmen. Today we call those salesmen merchandising (2281) salesmen and general salesmen. And it is the responsibility of zone manager, working both directly and through his sales organization, to help dealers to increase their profits by increasing the sale not only of petroleum but of those items that make the dealer's operation a well-rounded one and therefore make him more profit.

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Cross examination by Mr. Royall:

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(2298) Q. You were asked questions yesterday about the organization in your home office and elsewhere. Are you familiar with the name and duties of the position which Mr. C. R. Frohlin held in February 1951, at the time of the letter which was introduced yetserday as Exhibit 31? A. At that time Mr. Frohlin was the assistant division manager, administration, Norfolk division. I believe that title has been abbreviated now to assistant division manager.

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Q. You described to some extent yesterday the duties of other members of the organization in answer to the questions asked you by government. Do you know whether

or not that position held then by Mr. Frohlin embraces real estate leases from others to the Texas Company? A. His position did embrace the handling of real estate. That is, the leasing of land and properties from land-owners to the Texas Company.

Q. Is that separate and distinct from the leasing of property from the Texas Company to service stations? (2299) A. In our assignment of duties that office has to do only with the leasing of properties from the landowners, property owners, to The Texas Company, to the exclusion of the subleasing of those properties to dealers.

Q. Are you familiar yourself with the handling of leases of property to The Texas Company and the circumstances under which such leases are renewed or in some respects cancelled? A. I am.

Q. Is it or is it not the policy of the company to use the cancellation of a lease to the company as a method of cancelling a lease by the company to a service station operator? A. It is not the policy of the company to engage in that practice.

Q. Have you ever known it to be done? A. It is not the practice. In my experience I have never known it to be done. I have never known anyone to even suggest that it might be a means of cancelling a G-77C lease.

Q. And you have been with the company for how many years? A. Thirty.

Q. Mr. Halsell, do your duties give you information as to how many people in what divisions of the company, including those divisions you asked about yesterday—I mean divisions not in the technical sense but various echelons of the company—do you know how many people are engaged in the TBA activity for Texas Company, approximately? (2300) A. Yes, I do. Between the people who give their entire attention to that work and those who give varying parts of their time to it, I should say there are a thousand-plus.

Q. Can you give a little more definite information as to where they are located, the type of activity they engage in, and so forth? A. Yes, sir. First, there are merchandising and general salesmen. They are the employees of the Texas Company who are in most frequent contact with dealers. I believe—and I am using rough estimates now—that there are in the vicinity of 700 of those. Then there are the zone managers who are the supervisors of the merchandising and general salesmen. There are some 225 of those.

Then there are the state managers. Over the country my estimate is that there are fifty state managers. Each state manager has a certain number of zones within his area.

And then there are the superintendents of sales training; fifteen of those.

And then there are the representatives' dealer training. I would place that number at about twenty.

Then there are dealer service representatives; 35 of those.

And then there are the representatives TBA promotion. The number there, as I recall it, is 18.

There are the assistant division managers, sales (2301) promotion, or assistant division managers, merchandising. That title varies between divisions. Between the two titles there are 15.

And then the division manager, too—at least I, in my function as a division manager—consider that the promotion of the sale of TBA materials, the assisting of dealers in their merchandising problems as they involve TBA and its merchandising, I consider that that was a part of my work.

Q. A part of those people have other activities as well, do they not? A. Oh, yes. I don't intend to convey that all those people give all their time to the TBA problem. They don't.

* * *

(2302) *By Mr. Royall:*

Q. I call your attention, Mr. Halsell, to this paragraph of the letter dated November 15, 1951, from Mr. Pannill to Mr. R. F. Ney and others, which reads as follows:

"I have been active in assisting Texaco dealers to secure more profits through the sale of TBA merchandise regardless of the supplier, and while we have data on the progress of customers of Firestone and Goodrich, we would like additional information on the Texaco dealer customers of other suppliers. Accordingly, it is requested that you develop and furnish this office the following information."

And then it gives the details of dealer's name and location, date station was opened or began handling Texaco products, principal brand of TBA products presently handled by the dealer and the indication as to whether the station previously handled either Firestone or Goodrich.

I call to your attention in addition to that language from Commission Exhibit 34, the Exhibit 55-A and B, which is in reply to it, and I ask you to examine it.

Do you know, Mr. Halsell, the purpose of that inquiry and of the information which it sought and obtained?

Mr. Dias: Your Honor, this man didn't write the letter. Mr. Pannill wrote the letter.

By Mr. Royall:

Q. Despite the fact that Mr. Pannill wrote the letter do (2303) you know the purpose of the letter and its answer? A. Yes.

Q. How do you know it? A. How do I know it?

Q. Yes. A. I know it because of similar experience of mine.

Q. Have your positions in the company brought you in contact with similar activities? A. Yes, sir.

Q. What was the purpose? A. The purpose was simply to investigate the possibility of increasing our aid and assistance to dealers to the end that they become better business men and more profitable merchants and sounder business people, and therefore better servants to the public.

* * *

(2304) Q. Did Mr. Pannill have any position or authority, or did his normal activity relate to the leasing of the filling stations, cancellation of leases? A. No, sir.

Q. Did it have anything to do with promoting sales? A. Sales of what?

Q. Of TBA? A. Yes, sir.

Q. I call your attention further to the Exhibits 36 and 37, which were introduced yesterday by the government, and ask that you examine them briefly yourself.

Was the purpose of the Exhibit 36 the same as that that you have just described as to 34 and 35? A. Substantially the same, involving different classes of accounts.

Mr. Royall: Your Honor, on Commission Exhibit 37 I would like to ask counsel for the government if they have received letters from any of the five persons named thereon, or other communications in writing from them?

Mr. Dias: I don't think I have to answer that, your Honor.

Hearing Examiner Kolb: I don't think that question is proper at this time Mr. Royall.

Mr. Royall: Your Honor, I don't want to argue that at length. Your Honor, I don't know what the purpose is of (2305) offering this letter of March 1, 1951, from Mr. Pannill, which gives a list of five people who handle products other than Goodrich. And of course I don't know whether it is connected

up with evidence which they have announced they are going to offer in the field. But if they offer evidence in the field relating to service station operators, certainly it is competent for us to determine at some time how many they contacted unsuccessfully.

Mr. Dias: Which is a conclusion also, your Honor.

Mr. Royall: It may never arise. Not seeking to argue it greatly, you cannot have many thousand of dealers in any commodity where there won't be some cranks and some chronic malcontents, and some other classifications. In this case, by any stretch of the imagination, whether it be dealers or anybody else, if it is an effort to try by example, we want all the examples that they have contacted and we will at the appropriate time move for them.

Your Honor has made his ruling on that. I want to ask Mr. Dias if the paper I hand him is a correct copy of the letter which he wrote himself to Mr. H. C. Watson, which is one of the names listed on here, and a copy of Mr. Watson's reply.

Mr. Dias: Do I understand that counsel is making this witness his own witness?

Mr. Royall: I am asking you now.

(2306) Mr. Dias: I refuse to answer.

Mr. Royall: What?

Mr. Dias: I refuse to answer.

Mr. Royall: Your Honor, I will not press that point further at this time. I reserve the right to bring it up later.

I wonder if Mr. Dias would object to the identification of these papers for further offer?

Mr. Dias: Yes. How is this man going to identify them?

Mr. Royall: Would you object to identifying them?

Mr. Dias: Yes, I do. I don't believe it is part of this record. I don't believe it belongs in it.

* * *

(2308) Q. I hand you the inventory guide, B. F. Goodrich TBA, introduced by the government as Exhibit 52. I also hand you Exhibit (2309) 50, which is a letter from Mr. Hochuli. What does that letter in general relate to? A. This letter relates to a change in procedure which says that instead of the Texaco salesmen deferring action until a dealer has asked him to take an order for merchandise, that he may solicit an order from the dealer, which order, if taken, would assist in bringing the dealer's inventory up to its basic level.

Q. Going back to the inventory guide, what is the purpose and objective of the inventory guide, if you know? A. The purpose of the inventory guide is first to measure the dealer's inventory requirement by items. Having measured that, to compare the basic requirement with that inventory on hand. After that comparison is made to place on sale or to run a promotion or otherwise to dispose of those items which are in excess of the basic inventory requirement, and to place orders for those faster moving items which were in stock but in lesser quantity than specified by the basic inventory.

So the plan is to keep a balanced inventory on hand at all times. It serves the double purpose of keeping fast-moving items in stock and of ridding the dealer's inventory of those slow-moving items which tend to freeze his capital.

Q. Is it designed in part to see that the dealer keeps sufficient stock to operate effectively? A. That is the purpose, to give the dealer a guide along that (2310) line.

Q. And is it designed also to prevent over-stocking? A. Yes. It protects the dealer in that situation.

Q. And then I believe you stated that it is for the purpose of balance, of balance of stock; the kind of stock that is salable. A. Yes, sir. You see—

Q. What is that based on, that criteria that you fixed? A. It is based on two factors. First, the gasoline volume of the location, and second, on a consideration of the particular or peculiar market conditions that that dealer may face. If the dealer, through his experience, finds that he has an extraordinary demand for a low-priced tire or a premium tire, then he, in establishing his basic inventory, would take all that into consideration and to that extent would deviate from the base provided here.

Q. The initial decision is based on experience generally, on the average, it is? A. Yes, sir.

Q. And the dealer's own circumstances are taken into account in his case? A. Yes, sir.

Q. Who actually fills in and sets the inventory which a dealer is to carry? A. All these considerations are made by the dealer. As a (2311) matter of fact, the form itself, as I remember it, this column is headed "My basic stock"—my basic stock—meaning the dealer's basic stock.

Q. Does that figure come from the dealer after a discussion of the problem? A. Indeed.

Q. The letter, Exhibit 50, as you have stated, provides for the writing of orders. Would that apply in practice to the case where the dealer was under-stocked according to the inventory he fixed? A. Yes.

Q. And in that circumstance that is a selling or merchandising effort to write the orders, is that right?

Mr. Dias: Your Honor, I object to this type of leading questions.

Hearing Examiner Kolb: Overruled.

By Mr. Royall:

Q. Is it a selling— A. Yes.

Q. Do you know anything about the situation where the dealer has named the inventory he thinks proper, and he is overstocked? Do you know what is done usually or in many cases in that instance?

Mr. Dias: I object.

(2312) *By Mr. Royall:*

Q. Do you know? A. Yes.

Q. What is done? A. Well, the dealer in conference with the Texaco salesman decides on a promotion or a plan whereby those items which are in excess of the basic inventory requirement are disposed of, thereby freeing capital for the dealer's use elsewhere.

Q. What is the effect on the dealer of over-stocking; that is, stocking more than he needs for his business?

Mr. Dias: I object.

By Mr. Royall:

Q. Do you know what the effect on him is? A. Yes, sir.

Mr. Dias: This man isn't a dealer, your Honor.

Hearing Examiner Kolb: Overruled.

A. The effect is that he ties up capital in old and slow-moving stock, that he has insufficient capital to provide the items for inventory that do move in rapid order, and thereby he fills his shelves and his storage space with old and slow-moving items that have a very small—that make a very small contribution to his profit picture.

By Mr. Royall:

Q. Is it under those circumstances that the representative assists the dealer in getting his stock back to normal and in (2313) balance? A. Yes, sir.

Mr. Royall: You didn't put in Item 3 in the appendix did you Mr. Dias?

Mr. Dias: No, I did not.

By Mr. Royall:

Q. Are you familiar with the U. S. Department of Commerce's document on establishing and operating a service station? A. With parts of it I am.

Q. Will you refer to the portions that are marked therein in ink on pages 86, 95, 106, 109 and 111?

Hearing Examiner Kolb: Aren't we getting far afield on cross-examination, Mr. Royall?

Mr. Royall: If your Honor thinks so, we won't ask that question.

Hearing Examiner Kolb: I think I have allowed you considerable latitude.

Mr. Royall: I will withdraw that question.

By Mr. Royall:

Q. Do you know whether the principles of balance, of your own knowledge, whether the principles of a balanced inventory of salable items without under-stocking or over-stocking is well accepted in industry?

Mr. Dias: I object, your Honor, it is leading.

Hearing Examiner Kolb: The witness may answer.

(2314) A. Yes. It is one of the basic principles of merchandising.

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(2316) *Redirect examination by Mr. Dias:*

Q. This is the Frohlin document, Mr. Halsell. Will you look at that, please? This is Exhibit No. 31.

In connection with the property that Texas leases from third parties, is the property always improved, or sometimes improved to the extent that it has a station on it or not? A. In some cases we lease land and erect company facilities.

Q. Texas erects the property? A. Yes.

Q. In other instances do they lease land that has stations on it already? Is that so? A. Yes, in most cases.

Q. Is that type of property also involved in the type situation where you lease from an operator and then release to him? Is that type property involved? A. There is a situation where we lease a service station property from the owner and in turn sublease back to that same person.

Q. Would that type property also be involved within the scope of this particular document? A. No.

(2317) Q. It would not? A. No.

Q. You mentioned a number of people that take part in the TBA program. You mentioned that there are about 700 merchandising salesmen? A. I think I said merchandising and general, did I not?

Q. Is there a difference? What is the difference between a merchandising and general salesman? A. A general salesman gives his principal attention to the acquisition of new outlets. He also assists certain dealers in the merchandising problems they face. He solicits the business of car dealers. He handles the car dealer accounts we now have. He is quite a factor in the real estate program, the program having to do with the acquisition of new lease outlets.

Q. Will you explain that, please? Do you mean he finds a suitable location or suitable building? What does he do in that regard? A. The plan provides that the salesman will analyze his territory. In so doing he would divide the territory into marketing areas. Then he designates those marketing areas where his distribution is deemed to be suitable, or sufficient. At the same time he designates those where distribution is insufficient and decides on a way of bringing that deficiency into line.

(2318) If that method decided on involves a new station then he proceeds to select one or two or three real estate locations in that marketing area which may fill that need. Having made that selection he, through a little system of inter-company communication, requests the services of the real estate department to create the outlet that he has expressed a need for.

Q. Does he have complete authority in that line, or is that subject to approval somewhere above him? A. That is subject to approval by several people. That kind of an investment is quite an important one and several people have to agree that it is a proper thing to do.

Q. What type personnel? Can you give me their titles? A. Zone manager, state manager, the possibility that the assistant division manager, if the division is not too large and if the real estate property is not too far removed from headquarters, he may have a personal handling of that transaction.

Q. One of his duties is the acquisition of property. Does he also have anything to do with the disposition of properties?

Mr. Royall: Of what?

Mr. Dias: Disposition of properties. In other words, does he have any say in either the cancelling of leases or disposing of properties that do not appear to be profitable for any reason?

(2319) The Witness: The general salesman?

By Mr. Dias:

Q. Yes. A. Yes, if a property assigned to him is one which for one reason or another is unproductive, and can't be brought into a physical state which would make it productive, then he would be the one to suggest or recommend either a cancellation of the lease, if such a privilege exists in the papers, or to permit a lease to terminate without renewal.

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By Mr. Dias:

Q. Is this disposition of property also subject to the approval of the various personnel that you mentioned before (2320) on the acquisition?

Mr. Royall: Your Honor, I object to the word "disposition" because that is an ambiguous word in view of the previous question of Mr. Dias, and I think he ought to spell out what kind of disposition he means. Otherwise, it might give a wrong impression in the record.

Hearing Examiner Kolb: Objection overruled.

A. Your question is does he have sole authority to dispose of unproductive properties?

By Mr. Dias:

Q. Yes. A. Or do other people join in that decision?

Q. That is correct. A. The answer is that he does not have that sole authority; that other people join in the decision.

Q. He makes the primary recommendation, is that correct? A. Yes.

Q. What are his duties in connection with assisting in the TBA sales? A. Well, they are many. I can give you a great long answer to that.

Q. Suppose you give us a few of the more important ones. A. Well, this inventory control plan that we talked about awhile ago is one which he will suggest to the dealer, and in the process of a conference between the dealer and the salesman—

(2321) Q. Which salesman? R. I am talking about general salesmen. In the process of that consultation the basic stock will be arrived at. The dealer, of course, knows more about his needs than anyone else and he designates that basic stock. And then the two work together according to the plan we talked about while ago.

Q. Does this general salesman ever speak to the dealer in company with a rubber company representative? A. Yes.

Q. Of Goodrich or Firestone? A. Goodrich.

Q. Never Firestone?

Mr. Royall: Object.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Dias:

Q. When is it that this general salesman contacts the dealer with the rubber company representative? A. Infrequently. Perhaps at times when there is some extraordinary problem at hand.

Q. What would an extraordinary problem be? A. I can think of a sales problem which might involve the services of both men. The dealer perhaps has a prospect for maybe some very large and very costly tires. Maybe tractor tires, or a set of big truck tires. And in that situation we (2322) might acknowledge the fact that the Goodrich salesman has greater sales ability there than anyone else, and he might be willing to give the dealer the kind of sales help that would close that sale.

Q. Does it always involve Goodrich? A. Oh, no.

Q. What is the other type salesmen that you mentioned? A. The other kind of salesmen?

Q. Yes. A. The other kind of salesman that has a relationship with the dealer accounts is the merchandising salesman.

Q. Will you describe his duties? A. Whereas the general salesman gives a substantial part of his time to the creation of new outlets, the merchandising salesman in turn gives his attention to the development with the dealers of greater throughput of petroleum and TBA materials.

Q. Of greater what? A. Petroleum, TBA materials, other products and services that are allied to those operations.

Q. Which of these two are order takers? A. I beg your pardon?

Q. Which of these two salesmen take orders? A. For what materials?

Q. First of all for the petroleum products? (2323) A. They both do.

Q. Which of these two types check the inventory and write up an order for TBA merchandise? A. They both do.

* * *

Q. You mentioned, I believe, that the general salesmen at least conferred with representatives of the rubber companies. Does he ever confer with representatives of rubber companies other than those with which we are concerned? A. Yes, sir.

Q. And how about this inventory supply? Does he write up orders for any TBA supplies, either of these salesmen? A. For any TBA supplies?

Q. Yes, regardless of supplier. (2324) A. The salesman would be happy to write an order for any material where he could be of assistance.

Q. He would be happy to, but does he do it? A. Yes.

Q. Referring to that letter, Exhibit 50, I note that the salesman doesn't wait for any formal request of the station operator. Will you explain that procedure? Does he just walk in and go through the stock and write up an order? Is that the procedure? A. Oh, no. There is the consultation between the salesman and the dealer and there is a measurement of inventory on hand versus the basic stock the dealer has established for himself, and between them they write the order—prepare the order.

Q. They write it together, is that right? A. Yes.

Q. You mentioned that there are about 700 of that type of personnel. Approximately how much of their time is spent on TBA problems? A. I should estimate 10 or 12 percent; maybe 15.

Q. This 700, is that your country-wide sales organization? A. At that level, yes.

Q. You mentioned 225 zone managers? A. Yes, sir.

Q. Will you describe the duties of a zone manager, please? A. As I said yesterday, the zone manager is the immediate (2325) supervisor of general and merchandising salesmen. His job is to coordinate their efforts, to direct their efforts, to assist in the formulation and execution of sales campaigns, to deal with certain operating problems that occur from time to time in the sales department of my company, to help also in this matter of dealer assistance and promotion of the sale of petroleum and allied products.

The zone manager's responsibilities involve also the matter of credits and collections, industrial and employee relations.

Q. Credit and collections—what does that involve? A. It involves the fact that we at times sell our products on credit and it is the responsibility of those field men to see

that the products are paid for in accordance with terms extended.

Q. Are you talking about sales to the gasoline station operators? Is that what you refer to? Or consumer credit purchases? A. All types.

Q. What would be your estimate of the amount of time they spend on the TBA part of the program? A. Zone managers?

Q. Yes. A. I should say about the same as the salesmen do: 10, 12, 15 percent. That is a somewhat difficult question to answer.

(2326) Q. State managers, what are their responsibilities? And, incidentally, are state managers in the line of command over the zone managers? A. Yes. Their responsibilities are about the same as the zone managers except that their field of activity is wider. Whereas the zone manager has maybe four, five, six or seven salesmen with him, the state manager may have that many zone managers—three or four or five.

Q. How does he get into the TBA program? A. On about the same basis, except as you might suspect, he is a little bit more removed from the actual sales line than the salesmen and zone managers are.

Q. Does he have contact with the outlets in any way, personally? A. Yes, sir.

Q. What sort? Does he conduct conferences, meetings, or personal visits? What does he do? A. You have hit it there. All three. It is his job to remain in the field as much as possible; to observe conditions and to assist with particular problems that arise. He also conducts and attends meetings. There are dealer meetings from time to time and his presence is always necessary there.

Q. Can you tell us a little about those dealer meetings? A. Our formal dealer meetings are held usually once a year. That is the formal dealer meeting. At the meetings

we usually (2327) get our sales story across in a combination personal-verbal presentation and by moving pictures. Frequently we will show two or three moving pictures—one feature film and perhaps two secondary ones.

Q. Are those industrial type films? That is, do they concern petroleum or the marketing of petroleum? A. They are almost entirely concerned with the merchandising problem. And that of course embraces not only the actual sale of petroleum but all the myriad details that go with good service station operation, good business management, doing a rounded sales job instead of a partial one, bookkeeping and accounting procedures.

The films are beamed at the dealer and designed to help him do his job better.

Q. Does Texas make that film, or have it produced for them? A. We have the film produced. Usually in California; feature films.

Q. At the same meetings are there ever any TBA films? A. I don't recall that there are any films devoted entirely to TBA. I rather think not. But throughout, woven into all these films, are stories and presentations involving the merchandising of tires, batteries, and accessories.

Q. Are they specified by brand? A. Not in the films, no.

Q. At these meetings, in addition to petroleum representatives, (2328) are there ever any Goodrich representatives present? A. Yes.

Q. Are there any Firestone representatives present?

Mr. Royall: We object to that, your Honor.

Hearing Examiner Kolb: Objection sustained.

By Mr. Dias:

Q. However, you did say there are Goodrich representatives present? A. Yes, sir.

Q. Do they always attend these meetings? A. I wouldn't say they always do, but they are quite generally in attendance.

Q. You say these are held once a year. Are similar type meetings held during the year? A. No.

Q. Is it your testimony that there is only one meeting a year? A. No.

Q. What other type meetings are there? A. Dealer, sales, and service conferences.

Q. Who is present at those meetings? A. A group of from ten to twelve to fourteen dealers and perhaps some dealer helpers. At those meetings we talk about specific merchandising problems, and the meeting, of course, is—it is a conference more than a meeting. It is designed (2329) to help inform the dealer in the matter of service station operation, merchandising and the like.

Q. That too includes discussions of TBA as well as petroleum? A. Yes.

Q. Are there any rubber company representatives present at that time? A. No.

Q. Usually? A. No.

Q. Generally? A. No.

Q. Not even on occasion? A. I wouldn't say that. But as a general thing the TBA people are not there.

Q. How often are those types of meetings or conferences held? A. Every 90 days. There are four this year.

Q. Are the rubber companies notified of these meetings? A. I don't know that they are, no.

Q. How much time do you think then that the state managers spend on TBA? Can you give us an estimate as to their participation? A. I think it is all relative to the amount of time the others spend. The answer is the same.

Q. Would you say that all the way down the line it is about 10 to 12 percent? (2330) A. In those line people, yes.

Q. You mentioned superintendent of sales training? A. Yes.

Q. How does he fit into this picture? Is he superior to the state manager? A. No, he isn't. As a matter of fact, there is no relationship between those two positions in the matter of superiority.

Q. Where is he usually located? A. He is located in the division office.

Q. What are his duties? A. His duties are to conduct regular and protracted training programs designed to improve the selling capabilities of our selling organization.

Q. Does that, too, include TBA program? A. Yes.

Q. You say Yes? A. Yes.

Q. Does he attend these various meetings that you mentioned, or does he hold some of his own? A. He would be in attendance at a number of these—do you mean dealer sales and service conferences?

Q. Yes. A. He would be because an important part of his work is to train our merchandising salesmen to conduct these conferences in an effective way. So having trained, or having gone through (2331) the training process with our salaried people, he naturally is interested in the effectiveness of his work and theirs. So he does a—

Q. You mentioned salaried people. Are your salesmen, general and merchandising salesmen, on salary or commission? A. They are on salary. There is a small bonus there, but it is an insignificant part of their compensation.

Q. Does that bonus depend on their volume of sales? How does the bonus work? What is the bonus based upon? A. The bonus is based on the increased sale of motor oil and grease in a given sales territory one year in relation to another.

Q. Do they receive any bonus whatsoever for TBA sales? A. There is no bonus there. From time to time

there are contests of short duration and the winners of the contest are rewarded with some kind of prize.

Q. The contest involves sales of TBA products? A. It may, yes, and has.

Q. You mentioned a representative dealer-training. Before I get off the superintendent of sales training, you mentioned that he attends those meetings or conferences that you outlined before. Does he ever have any of his own? In other words, does he call some in addition to that other type meeting? A. His work is entirely, as I said before, with our own salaried organization.

(2332) Q. He does not ever see the station operators or get together with them on these conferences? A. Well, as I explained before, he is there as an observer, you see. You see there is only one of those men in a division, so it would be very difficult for him to attend 40 or 50 or 60 dealer conferences except on a spot-check basis.

Q. In other words, these conferences that you refer to, you mentioned before that there are four in a year? A. Yes.

Q. That would be by zone or territory or division? Which is it? By zone? A. Each salesman would have four conferences per year.

Q. Each of the 700 salesmen? A. Yes. Wait now. When you say 700 salesmen you are including general salesmen there. The general salesmen are not quite as active in that program as the merchandising salesmen are.

Q. How many of each do you have? Is there any way of determining? Do you know offhand roughly is there any more one than the other? A. I don't know. I don't know what the relationship is. They are more general in merchandising.

Q. On the representatives of dealer training, how do they fit into this picture? Are they up the ladder here? Are they superior to the others that I have mentioned be-

fore? (2333) A. The representatives, dealer-training, are in the office of the superintendent of sales training.

Q. In territorial or divisional offices? A. Yes. And those men work directly with our salaried organization in improving their techniques and presenting this work to the dealers.

Q. Are they strictly inside men? A. No, they are outside a lot.

Q. Do they ever hold conferences with dealers, and station operators? A. Yes.

Q. Is it the same conferences that you were talking about before? A. The same general.

Q. So up to date at these dealer meetings and conferences we usually have a salesman, zone manager, state managers, superintendent sales training, representative of dealer training. Are they all there at all or some of them? A. All there at meetings.

Q. Present? A. They are all interested and they are all in attendance from time to time but not at all meetings.

Q. One or the other are at all meetings? A. Not at all of them. There just isn't enough manpower to go around. We hold many meetings. In many instances the (2334) merchandising salesman is going it alone.

Q. You stated that your estimate would be 10 or 12 percent of the time spent on this, on TBA? A. By whom?

Q. By the representative, dealer-training. A. Yes, I suppose so. I think perhaps he may spend more than that. I would put him on the high side of the bracket.

Q. Fifteen percent? A. I think so.

Q. How about the dealer service representative? What are his duties? A. The dealer service representative is a sort of a free lance man who gives—he will go to an area where there is a particular problem and work with the salesman, and work with certain dealers in that area.

Q. Those problems also include TBA problems? A. In-

sofar as the TBA problem contributes to a dealer's welfare or lack of it.

Q. But it also— A. It is all involved in the selling process.

Q. Would it also involve the dealer to the extent that if his purchases weren't adequately high, we will say, would he be concerned with that? A. He would be concerned with the fact that a dealer was selling insufficient allied product along with his petroleum (2335) to give him a well-rounded operation and one which led to a suitable profit to that dealer.

Q. Who determines whether a suitable amount of TBA is being sold or not? A. Well, we had a profit guide here.

Q. It is based on the profit guide? A. That gives a general indication of what a dealer should do, TBA-wise and service-wise, to qualify as a good salesman and as a profitable operator.

Q. And the time he spends on TBA would be approximately what? A. Fifteen percent.

Q. The representative, TBA promotion, what are his duties? A. The representative, TBA promotion, is the person in the division office who gives his entire attention to the promotion of TBA sales to dealers, and to the job of assisting those dealers through the organization to merchandise their products in a more effective way.

Q. The TBA promotion, the representative, TBA promotion, does he go into the field, too? A. Oh, yes.

Q. Does he meet with the salesmen of rubber companies together with company salesmen and dealers? A. Yes, he does, but not frequently. You don't have that many people together.

(2336) Q. You have mentioned allied lines several times. Does that include TBA? A. Yes.

Q. Can you give us a little more information about what this representative, TBA promotion, does? A. He

travels in the field. He institutes promotions to increase the throughput of TBA materials with dealers.

Q. The what? A. The throughput.

Q. What does that mean? A. The movement through. He is in frequent contact with the Goodrich people. He helps to transmit their sales campaigns, their product information to the Texas Company dealer organization through our salaried people; he attends Goodrich meetings to better inform himself of the myriad complexities of that business. From time to time he—not from time to time but on a rare occasion he leaves the city and perhaps goes to some factory of Goodrich to better inform himself of modern manufacturing and most recent merchandising procedures.

He is a man who, by the very nature of his work, does little else.

Q. Does he also pass this information along to station operators, the information he gets that way? A. He does. Of course, as I said, so many times, through our organization, yes.

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(2338) Q. You mentioned assistant division manager, sales promotion. What are their duties? First, you also mentioned another name. Would you mind giving us that name? (2339) A. Assistant division manager, merchandising. Is that it?

Q. I don't know. You mentioned two. I missed one. There is assistant division manager, sales promotion? A. Sales promotion.

Q. Yes. A. And assistant division manager, merchandising. In some divisions one title applies; in others the other does.

Q. The duties are the same however, are they? A. Not exactly. But substantially so.

Q. Then substantially what are the duties of that type personnel? A. The assistant division manager, sales promotion, gives all his time to the important work of developing programs, campaigns, sales drives, all kinds of promotional developments which are designed to increase the throughput of petroleum and allied products to dealers.

Q. Does he attend any of these conferences and meetings? A. Yes, sir.

Q. What is his position in relation to these others? Is he superior to these others? A. Yes. He heads that whole operation at the division level.

Let me clarify that. He is in charge of the superintendent, sales training. He is in charge of the representative, TBA promotion. He is in direct charge of the representatives, dealer training. He has supervision over the dealer (2340) service representatives. His relationship with state managers, zone managers, and salesmen is one of a staff person to line organization.

Q. And his time spent on the program, on the TBA end of the program, is that relative, too, to the time spent by others? Or would you estimate 10 to 12 percent? A. Yes, I think you are about right there. Ten or 12 percent.

Q. How many division managers are there? I believe you stated that you are a division manager. Is that correct? A. I was at one time.

Q. At what time? A. I was an active division manager beginning in April, 1943, and ending in 1945. Just about 24 months later. I don't remember the exact date. And I continued in that capacity in two locations, from 1945 to 1953.

Q. I assume there is a division manager for each of the divisions in the organization? A. Yes.

Q. How many divisions are there? A. There are 15.

Q. What are the duties of the division manager? A. The division manager is the general manager. His re-

sponsibilities are complete for the division in which he operates. Do you want more detail?

(2341) Q. No. That will be all right. These others that you have listed, then, fall under his supervision? A. Yes.

Q. His overall supervision.

How much time does he actually spend on TBA promotion? A. Five percent. Maybe three percent. Make it three.

Q. You were asked about this Exhibit 34 and 34-A on cross-examination. It deals with a request for a report, to which this was a reply, Exhibit 35. A. Yes, I believe I saw it yesterday.

Q. I believe you stated that this was not a unusual request to make? A. No.

Q. Do all divisions, zones, make the same requests for the same type information? A. It would depend on the individual and his particular method of compiling that kind of information. But he would write either that kind of letter or he would find another way of acquiring the same kind of information, if he is a good manager.

Q. Then that is the type letter that emanates from the manager's office, is that correct? A. In this case it did. It is from the assistant territorial manager this letter emanated.

Q. I take it that— (2342) A. I am afraid the record might be confused. Mr. Pannill, assistant territorial manager, wrote Mr. Driver, who was in the Norfolk division at that time.

Q. Yes, in response to Mr. Driver's request for that type information. A. No. Mr. Pannill asked for the information and Mr. Driver supplied it.

Q. You are correct.

On this letter again, Exhibit 34, in addition to Mr. Driver there was a Mr. Ney, Mr. Norman, and Mr. Wall.

Do you know whether or not the two filed responses to that letter? A. No.

Q. You have testified quite fully on the Goodrich inventory guide. I will hand it to you. That is Exhibit 52.

Do you have any idea of what the cost of a basic inventory would be? A. Frankly, I don't.

Q. Do you know who made up that guide? A. I don't know. But my inference—the inference here is that the Goodrich Company prepared the guide.

Q. You testified that it was made up on the basis of experience and general information and the like. What and whose experience, do you know? A. Probably the experience—

Q. Not probably. I say do you know? (2343) A. No, I don't know.

Q. You only infer that Goodrich made it up. A. I infer also that it is their experience, but I can't answer positively.

Q. Also you mentioned the fact that the purpose of it is to build up the stock and promote the welfare of the station so they will sell more merchandise and make more money. A. There are two purposes. To increase the stock in certain areas and to reduce it in others.

Q. Reduce what stock? A. Superfluous stock.

Q. Regardless of brand? A. I am sure this guide could be used in anybody's station. It would apply anywhere.

Q. You mentioned that the reason you help them is that the more they sell the more money they make and they are happier. A. That is one of the purposes, yes.

Q. Isn't it also true that the more they buy the more Texas makes? A. Yes, sir.

Q. Were you ever a salesman, Mr. Halsell? A. Yes.

Q. For how long? A. My estimate is four years—three years.

Q. Which type of salesman were you? General salesman or the (2344) merchandising salesman? A. In those far-gone days we didn't have that separation of duties. I was a resale salesman. That was the title.

Q. What year was that, Mr. Halsell? A. 1928-1931.

Q. Have salesmen always been on a salary basis, Texaco salesmen? Or merchandising men? whatever the title is. A. Yes, sir.

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Q. One final question on Commission Exhibit 31. It may be that we are wrong, but did you say that this leasing of property did not refer to situations where an operator leases the property to Texas, and Texas in turn releases to the station operator? A. Do you mean the leased location referred to here?

Q. Yes. A. Let me look at the letter again.

Oh yes, this applies to all types of lease accounts.

(2345) Q. All types of leases? A. Yes. It says so there.

Q. The language "same party lease" is the thing that was not clear.

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(2347) S. C. BARTLETT was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

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Direct examination by Mr. Dias:

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Q. Will you state your full name and title? A. My name is S. C. Bartlett. I am Vice President in charge (2348) of domestic sales.

Q. And you are stationed where? A. In New York, home office.

S. C. Bartlett, for Commission—Direct

Q. How long have you been with the company, Mr. Bartlett? A. Thirty-two years.

Q. When did you start your present position and duties? A. My present position began March 1, 1955.

Q. Will you describe your duties, please? A. I am in entire charge of the Texas Company's sales activities in the 48 states of this country. That includes sales as such, operations, all matters relating at all to the operation of our sales department.

Q. Does that include, too, the promotion of the sale of TBA products? A. It does.

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(2350) *By Mr. Dias:*

Q. I assume you have read this document, have you, Mr. Bartlett? A. Yes, I have read it.

Q. It is addressed I believe you stated, to these gentlemen, the territorial managers? A. Yes, sir.

Q. Did this document also go to dealers? Station outlets? A. Not to my knowledge. I would not think so.

Q. Will you refer to page 3, paragraph 2. That reads: "Immediately contact the sales representative of the dealer's chosen supply point, and if possible make a definite appointment with him for a joint call on the dealer for the purpose of setting up his basic stock and inventory guide."

From whom do you receive these basic stocks and inventory guides? A. I believe that is the item Mr. Halsell discussed this morning. Q. In other words, Goodrich and Firestone, is that correct?

Mr. Royall: Objection.

A. Goodrich.

Hearing Examiner Kolb: Objection sustained as to Firestone.

By Mr. Dias:

Q. Then this paragraph refers to the Goodrich inventory (2351) guide, does it not? A. I would say so, yes.

Q. And is the tenor of the paragraph directed toward Goodrich? A. Yes

Q. I direct your attention to the third paragraph on page 6 of that document, Mr. Bartlett. "In their efforts to promote the dealer's TBA merchandising, our sales representative no doubt will run into situations where the dealer is not entirely clear on his buying arrangements or has some complaint as to the merchandise or treatment received from his supplier. In such cases our sales representative should arrange with the sales representative of the supplier to make a prompt call on the dealer to clear up any misunderstandings. When desirable or necessary when requested by the dealer our sales representatives may be present when the supplier representative makes his call on the dealer for this purpose."

Does that, too, refer to the rubber company representatives? A. Yes, Goodrich.

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(2352) *By Mr. Dias:*

Q. Are you familiar with that letter at all, Mr. Bartlett? Have you seen it? A. Yes, I have read it.

Q. That is a statement of policy, is it not? A. Yes.

Q. Was the same policy repeated periodically prior to or (2353) since that date? A. Yes.

Q. It has been? Have there been some more recent statements? A. Well, I believe there have been. I can't tell you the exact date.

Q. You are certain that there were some prior to that date, are you? A. Yes.

Q. Is it a matter of course that that type letter is put out? Is it put out periodically? A. Well, we reaffirm

these instructions from time to time. We have been very consistent in maintaining this position and reaffirming it from time to time.

Q. Do those letters go to dealers, that is, station outlets? A. They do not.

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(2355) Mr. Dias: I would like at this point to read this stipulation into the record: Texas has submitted copies of all types of credit cards issued during the period 1951 through 1954, and that the conditions printed on the reverse side of those credit cards issued prior to 1955 were the same in all material respects as those appearing on the credit card for the year 1951, namely, Commission Exhibit 97. Commission Exhibit 98 is a copy of the credit card issued in 1955. The conditions printed on the reverse side of that card are the same in all material respects as those appearing on the current credit cards.

(2356) *By Mr. Dias:*

Q. During 1951, Mr. Bartlett, what type credit card was issued? Was it only an annual card or did you have other types? A. No, we have other types.

Q. Will you name them, please? A. At various times in the past we have had, in addition to an annual card, we have had cards that were valid for either four-month periods or semi-annual periods. I believe there was some change at one time between six-month cards and four-month cards.

Q. Exhibit 97, I believe, indicates that that is an annual card. Is that correct? A. It is written in there, in pencil, yes, it is annual.

Q. No, printed on the lefthand corner doesn't it say "year 1951"? A. Yes, that's right. That is correct.

Q. That is an annual card? A. Yes. Correct.

Q. Regarding those credit cards that were issued during 1951 through 1954, do you know what the instructions were that were given to the operators of stations in regard to the use of those credit cards? A. I know generally. It would follow pretty closely the validity of the card, or the usefulness of the card as explained on the reverse side.

(2357) Q. There is a provision on the reverse side to the effect that this card will be honored for the following merchandise, and paragraph 2 indicates new automobile and truck tires, tubes, batteries, et cetera. A. Yes.

Q. In other words, at that time it was good on those purchases, is that correct? A. Yes.

Q. In the 1955 card, Exhibit 98, that now reads "good only for Firestone and Goodrich TBA," is that correct? A. That's right.

Q. What instructions were given to your operators on that card? A. Similar instructions in keeping with the wording on the back of the card.

Q. Do you have any printed instructions relative to the use of credit cards? A. I think we have had at various times in the past more or less a bulletin or a placard that was furnished to dealers, that gave them information as to the proper use of the cards.

Q. Could you furnish for us—not today but in the near future—a copy of the instructions relative to the use of the 1955 and 1956 cards? If there was a change in 1956? A. Yes, I am sure we could.

Q. When may we expect that from you? (2358) A. I don't see why we can't, if there is such a one presently existent, which I assume there is. I know that in the past we have furnished instructional bulletins or placards that would assist a dealer in the utilization of the credit card.

Q. And you will supply us if you have that? A. Yes. As far as I am concerned.

Q. In view of that provision on the 1955 card, that is Exhibit 98, what happens if non-sponsored items are charged on the card? A. Well, as a practical matter it would probably not be noticed. I mean there is no definite policing system involved.

Q. You mean that is just an idle condition? A. No. We mean what we say here, but it has a factor of—there are many, many of these transactions going forward every day and I take it it would be a physical impossibility to check every one of them.

Q. Assuming that one was noted, what would happen? Do you know of any occasions of that sort? A. No, I do not.

Q. Do you have any idea what the procedure would be if a credit card was used for a purpose other than stated? A. I presume if it came directly to the attention of our people, they would remind the dealer of the terms and conditions under which they are to charge tires as per the provisions on (2359) the reverse side of the credit card.

Q. Would they honor the credit? A. I expect that they would, yes. I expect that they would.

Q. Would there be any recourse to the dealer? A. No.

Q. Would you describe the mechanics of transmitting the charge ticket from the station to the accounting department? A. Yes. The general system is that these credit card invoices, both applicable to gasoline, motor oil and other products as well as tires and accessories, those invoices are accepted by us and as we deliver products to the dealer. In other words, if he has invoices in the amount of $100, that is accepted as that much cash by our delivery system, by our truck operators. He is given full reimbursement for the face value of the tickets or invoices representing sales made against these cards.

And they are assembled through—sent back through our division office where our credit card bookkeeping and accounting and billing is done.

Q. And at that point do they or do they not check these slips to determine whether or not the charges on the card are accurate or involve— A. Well, the checking I believe is largely a matter of arithmetic. There are so many of these tickets that we cannot, as a practical matter, do very much checking. They go through (2360) the office in great numbers. They are simply added up as to the total amount involved. We pay no attention to the prices at which the products are priced, the gasoline or the motor oil or anything else, and it is a mass operation.

Q. Is 1955 the first year that that particular legend appeared on the back of the card? A. That's right.

Q. That is the first time it was ever restricted to Firestone/Goodrich? A. Well, it has, so far as I can remember—I believe that in the 1940s, at some point, it was somewhat similarly restricted.

Q. How long did that continue? A. I can't tell you how long it continued. It is my opinion that that was—that the card was changed in line with the exhibit that you have given me here, 97, in 1947 or 1948. Of course, during the war the credit card—the entire credit card system was put aside for the period of the emergency.

Q. However, you did have that restriction in cards in prior years? A. It is my understanding, yes.

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(2361) *By Mr. Dias:*

Q. For the record, Texaco is a contraction of Texas Company? A. It is a trade name, a contraction of the Texas Company.

Q. What type outlets are "C" accounts? A. Well, they are accounts where we lease the property from the property owner and in turn lease them to dealers, and also stations that we ourselves own either on fee property or on leased property.

Q. And "D" accounts? A. They are accounts which we supply on dealer sales agreement, where there is no lease involved.

Q. Do they own their own property? A. Usually, yes.

Q. At least Texas does not? A. No, we do not—in the instance of the "D" accounts?

Q. D accounts. A. We have no ownership.

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(2363) *By Mr. Dias:*

Q. In 1955 there were 38,420 total Texaco dealers. You agree that these figures are accurate? A. I believe them to be, yes.

Q. The number of "C" dealers was 13,366, and the number of "D" dealers was 16,806?

Mr. Royall: Do I understand you are offering that in evidence?

Mr. Dias: No, I am not. I am just getting these figures.

By Mr. Dias:

Q. Mr. Bartlett, in 1955 you appeared on the Hill before Mr. Roosevelt's committee and testified that as of 1954 you had roughly 38,000 retail stations and that of that number some 8700 were service stations on which you owned or held long-term leases, is that correct? A. Is that what it says?

Q. I am reading from the testimony. If you would like to read this—

Mr. Royall: Why don't you refresh his recollection?

Mr. Lorenzen: What page?

Mr. Dias: 740.

(A document was handed to the witness.)

Mr. Royall: Your Honor, the witness who prepared this chart and which they are using for examination, is present (2364) and can explain that difference, if they want to. I have no objection to him asking the witness if he knows.

The chart was prepared by Mr. Glenn.

By Mr. Dias:

Q. In 1955 you stated that there were roughly 38,000 retail outlets and 8700 service stations on which Texas owned or held long-term leases. The company records show that during 1954 there were 38,014 Texas dealers and that there were 12,674 "C" dealers rather than the 8700 that you mentioned. Will you explain that discrepancy? A. Yes. The principal difference there is that we have three to four thousand what we call same-party leases; that is, where we lease from a dealer and lease back to the same individual, as opposed to our third-party type of lease station where we lease from an individual and lease it back to a dealer who is a different person, and company-owned. So that difference is largely due to the fact that there are these so-called same-party leases in effect.

Q. Would the difference be roughly the same as to the 1955 figures? In other words, there are now 38,420 total Texaco dealers, of which there are 13,366 listed as "C" dealers? A. I would think so because our third-party or lessor-built increased in number to some degree since then. Each year they are increasing.

Q. As to the 38,000 that you referred to, roughly 38,000, (2365) and the approximate 8700, you mentioned that the 8700 accounted for about 33⅓ percent of your petroleum sales. Is that correct? A. That was stated in the letter that is quoted from me, wasn't it? Down below?

Q. Yes. Your answers to these questions are in that letter and I would like to read that letter into the record, if your Honor please.

You have read this letter? A. Yes.

Q. And it is accurate? A. To the best of my memory.

Mr. Dias: May I read that into the record?

Mr. Royall: What is the date of it?

Mr. Dias: June 6, 1955.

Mr. Royall: No objection.

Mr. Dias: It is addressed to the Honorable James Roosevelt, Chairman, Subcommittee No. 5 on Distribution Problems, House of Representatives, Washington, D. C. "Dear Sir: At the time of my appearance before your committee on May 26, 1955 the committee requested additional information as follows: (a) Copy of the Texas Company's TBA program and statement of policy as issued to the sales department organization. (b) Information with respect to the gallonage sold through the 8700 dealer outlets either owned by the Texas (2366) Company or held under long-term lease as compared with the volume sold through other dealer outlets.

"In compliance with the request of the committee I am attaching a copy of a letter issued by Mr. C. B. Barrett, under date of December 11, 1953, to our territorial managers at New York, Chicago, Houston and Los Angeles under the subject 'TBA Program, Statement of Policy.' Mr. Barrett at that time was vice president in charge of the domestic sales department. Shortly after receipt of this communication identical call letters were issued by the four territorial managers to our 15 division managers. The division managers are charged with the responsibility of carrying out the policies of the

sales department through the field organization in their respective areas.

"I indicated in my statement to the committee that at the end of last year there was slightly more than 38,000 dealers selling Texaco products in the United States. Approximately 7,500 of these dealers are supplied by Texaco distributors. The balance being supplied directly by the company either through its salaried organization or through Texaco consignees. Our sales figures for the year 1954 disclose that 32.55 percent of our total sales of gasoline was sold through 8,660 service stations either owned by the company or held under long-term lease (We now have more than 8,700 service stations either company-owned or held under long-term (2367) lease). The volume sold by the remaining 21,850 dealers (excluding the 7,500 supplied by distributors) equalled 33.75 percent of our total gasoline sales.

"I sincerely hope that the foregoing represents the information the committee desires.

"Yours very truly," signed "S. C. Bartlett."

By Mr. Dias:

Q. Mr. Bartlett, how many company-operated stations does the Texas Company have? A. I can't give you the exact number but I would think that at the moment it is not over 25 or 30. Most of those or a number of those are in connection with thruway stations that we have bid on successfully such as the New York thruway, Ohio Turnpike, Indiana, and Kentucky, which almost of necessity have to be operated on a salary basis. Otherwise, the other few are largely for training purposes.

Q. Are these company-operated stations all the same or does Texas lease stations to company-operated and vice

versa at will? A. Not at will. There have been some conversions in recent times from dealer operation to a salaried operation; a few instances.

Q. In other words then, the station that may be salary operated today might very well be a leased station tomorrow, and the other way around? (2368) A. It could be, yes. There haven't been many of those switches, however. We haven't operated many salaried stations historically.

Q. You mentioned the training stations. Just what is the purpose of a training station? A. Well, it permits us to train in two different directions. One direction is that we can have our student salesmen, our trainees, who are looking forward to a career with the company beginning as salesmen, we have them spend a certain period of time in those service stations observing good service station operation and practices.

The other function that it can and does fulfill often is that dealers, of their own volition, may come—prospective dealers—and observe and receive training at those stations for their benefit in subsequent times when they themselves are going to operate a service station.

Q. With these trainees exclusive of the salesmen, I mean operators, is it a general rule that a prospective lessee go through a training program first? A. No. We give them whatever training we can. But the number of these training stations is so limited that we can by no means begin to cover the wide field.

Q. However, those prospective lessees who do receive the training program, or go through it, how long a course is it? What length of time do they spend there? (2369) A. I couldn't say. Do you mean at the training station?

Q. Yes. A. I don't think there is any prescribed time. Whatever time he is able to devote to it. We would like for him to spend as much time as he would like, but that varies entirely, I am sure, from just a few days to longer. I have no direct information.

Q. What type of TBA products are handled in those stations? A. It varies. In some we handle Goodrich.

Q. And in others? A. Firestone.

Q. In none of these training stations do you handle anything but sponsored brands, is that correct? A. Not to my knowledge.

Q. Are petroleum products sold directly or indirectly?

I will withdraw that. I think that has been answered by the letter.

Let me put the question anyway. How are the petroleum products sold to outlets? Are they sold directly to outlets through Texas-owned and operated bulk plants, for example? A. I believe the letter stated that except for 7,500 dealers who are delivered to by our distributors, that the balance are delivered either through bulk plants operated by us on a salaried basis or by our consignees who deliver for our account.

Q. I believe part of this has been answered. You employ (2370) salesmen to sell petroleum products. Is that correct? A. Yes.

Q. And are these salesmen paid a commission or a salary? A. They are paid a salary and a small bonus factor.

Q. Do the same salesmen also urge the purchase of the sponsored brands of TBA? A. As explained previously today, both our general and merchandising salesmen in the course of their business cooperate with the dealers in all possible ways to improve their earnings, and one of the large factors in that is the well-rounded job of TBA sales.

Q. Will you look at Commission's Exhibit 18. Is Commission Exhibit 18 the regular lease form used to lease company-owned or lease-held property to operators? A. To dealers; that is right.

Q. And it is the one that is currently in effect, is that correct? A. Yes.

Q. Or substantially similar to it? A. Yes.

Q. Will you take this form and tell me what usually goes in these blank spaces? The first one after the words "Described as follows:", does that just describe the rented premises, the leased premises? A. That's right; the location described.

(2371) Q. After this next sentence "Together with the buildings, improvements, and so on, as follows" is there usually listed there the items that go along with the station? Is that correct? A. You mean such as equipment?

Q. Yes. A. Yes.

Q. In other words, that refers to fixtures, equipment, and facilities. I would like to know what do they usually consist of. Can you tell us that? Is there a fixed grouping of that type of thing that goes with the building? A. Yes. You see, usually and almost entirely we lease a complete facility to the lessee dealer.

Q. In addition to the building what would that be? That is what I am trying to arrive at. A. Usually it would be—

Mr. Royall: Your Honor, may I say this: You have asked for an exhibit on that, haven't you?

Mr. Dias: Yes, but it didn't answer the question in my opinion.

Mr. Royall: The witness should have the benefit of the exhibit.

(2372) *By Mr. Dias:*

Q. What normally goes with a station? Is there any fixed equipment, fixed tools or equipment of any sort? Any of those items that just normally go with a station? A. Yes, most of these.

Q. Most of them? A. In the average case where we are leasing a complete service station, which is true where

we own it or where we hold it under a long-term lease, all of this equipment—and I mean all of the equipment here—is usually furnished.

There are certain items of equipment that the dealer furnishes, more in the nature of lubrication equipment or small tools. But this list is largely one of the equipment that is leased to a lessee dealer along with the building and other permanent fixtures.

Q. There is mentioned in there a large oval sign. Is that furnished or does the dealer rent that from you? A. Oh, no, that is furnished. That is advertising material.

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(2373) *By Mr. Dias*:

Q. This lease also provides for the rent. How do you determine the rental on a station? I notice here first of all that under Section A there is a flat sum, and then there is an alternative method of so much per month plus so many cents per gallon. First of all, when is a flat rental charged? A. These programs—I haven't been close to this for some years—these rental programs vary in different parts of the country. My memory of it, when I was more close to the situation, was that we usually charged a flat rental to cover what we thought was a reasonable facility charge considering the number of lubrication bays and other facilities that he had, and then so much a gallon in addition thereto.

In other words, the common useage of it is a combination, flat and gallonage rental, although that isn't to say that in certain instances where the dealer wishes it and where it seems to be mutually agreeable, we may charge just a flat rental for that property.

There is no fixed pattern actually throughout the country at all.

S. C. Bartlett, for Commission—Direct

(2374) Q. The lease provides various grounds for cancellation. Who determines ultimately that a lease should be cancelled? A. I would think that if any of our field people felt that we had grounds for cancellation—and incidentally which would be very seldom and I don't remember one—they would ordinarily come through to our division office with an explanation of the situation and it would be ultimately referred to our legal department before any move whatever would be made.

Q. Is the lessee given any notification that his lease—that there is thought of terminating his lease? A. Of course, the formal notification is called for in the lease.

Q. I understand that. But then it is accomplished, in other words. That is a notification to get out. My question is, is he notified that such a move is anticipated? A. Those instances are few and far between. Most cancellations are effected by mutual agreement, or by the dealer walking off the premises, which happens. I can't say whether the matter is discussed previously or not. It would vary under various conditions. I can't say.

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(2376) *By Mr. Dias:*

Q. The lease provides for a one year term as I understand it? A. That is right, and then it continues.

Q. And at the end of one year this lease terminates. Is (2377) that correct? A. No. Unless notice is given, ten days notice of its termination. If no notice is given it automatically extends for another year's term. That is automatic. That is done in 99 percent of the cases. More than that.

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By Mr. Dias:

Q. There are housekeeping provisions in this lease. Who checks on those? General appearance, housekeeping, maintenance of station and so on. A. Well, it is one of the duties of our salesmen calling on accounts to advise with the dealer, to encourage him to (2378) keep a clean place of business, with particular reference to rest rooms. And it is one of the prime responsibilities of our field men to, so far as they can, properly influence the dealer to keep a neat, attractive, presentable place of business for his benefit and the benefit of all other Texaco dealers across the country.

Q. When the station is found lacking in its appearance, when it doesn't meet the standards set by Texas, is a report of that turned in to a superior by the salesman? A. There is no regular reporting on a thing of that kind. I believe there is a report of inspection of our registered rest rooms, and that is the only thing that I know of that is in the nature of a report.

Q. What is the procedure when a lease is cancelled? What is the procedure with respect to the disposition of the operator's stock? A. Well—

Q. He will have petroleum products and he will have gas products on hand. What disposition is made of that? A. Of course, you understand that I am not dealing in these situations every day. I can only tell you my general understanding which is based largely on my experience when I was more intimately associated with day to day operations in the field. But if you want an answer on that basis—

Q. You might give us an answer and if it isn't satisfactory (2379) you might tell us who would be thoroughly familiar with that. A. You want to know what happens to the merchandise on hand when a dealer is in a station where we have cancelled the lease.

Q. Yes. A. My opinion of that is that usually the incoming dealer will contact the outgoing dealer and make a mutually satisfactory arrangement between themselves to take over, not only the products involved but probably more important in some instances the equipment, the lubricating equipment and other things that the dealer has invested in. We try to work it on a mutually satisfactory basis as between the incoming and outgoing dealer.

Q. Who would you suggest would be most familiar with that in the event we wanted some further information? A. Do you mean that might be here today?

Q. Well, yes.

Mr. Royall: We will get somebody if you want him.

The Witness: I don't know. We have people about that are constantly dealing in those matters.

Mr. Royall: There is somebody here who would know about that.

The Witness: Mr. Halsell would know more than I.

By Mr. Dias:

Q. Do you have any idea of average investment of a lessee? A. Investment in what?

(2380) Q. In a gasoline station. A man comes in and applies to open up a gasoline station. A. You mean lease a station from us?

Q. Lease a station from you. What is his initial investment usually? A. It would depend of course somewhat on the size of the station, the capacity of the storage, the volume of business that he anticipates doing. I would say, as my opinion of it, that in the order of five, six, to seven thousand dollars.

Q. I would like to show you Commission's Exhibit 19, agreement of sale. Is that the form currently in use? First of all, is it the sales agreement between the Texas Company and a lessee, a "C" dealer? A. Yes. It is agreement of sale. It is all types of dealers.

Q. Is it the form that is currently in use? A. That is my understanding, yes.

Mr. Royall: That is already in evidence, isn't it?
Mr. Dias: Yes.

By Mr. Dias:

Q. Now will you look at exhibit 20. What agreement of sale is that? Between whom? Texas and what type of outlet? A. I would say between Texas and most other types of customers other than dealers.

Q. Other than dealers? Do you mean other than distributors? A. No. I am talking about consumers and other than dealers (2381) because the previous exhibit mentioned covers our relations, sales relationship with dealers. This would cover industrial oil, gasoline to consumers, or any other products that might be sold.

Q. This would be an agreement of sale between Texas and the contract station, would it not? The "D" dealer. A. No, sir.

Q. It would not? A. This is government. "D" type is covered by this agreement also.

Q. 19 then is an agreement of sale between Texas and a lessee, and between Texas and a contract station? Is that right? Between Texas and a lease station— A. And any dealer.

Q. On the other hand exhibit 20 is the sales agreement between Texas and— A. All other types of buyers, industrial or consumers or car dealers.

Q. Commission Exhibits 21-A and B are the consignment agreement running between Texas and its consignee? A. That is right.

Q. Is that still in effect? A. Yes, sir.

Q. And 22-B through C, is that the regular distributor form and is it still in effect? (2382) A. That is the distributor form and it is still in effect.

Q. There is one further question on exhibit 19, Mr. Bartlett. They show a minimum and maximum figure for those various petroleum items. What is the purpose of the maximum figure? A. The only purpose that I can immediately think of is that in periods of scarcity or stress of some kind we would not be obligated to deliver more than that quantity to the dealer. It is largely inoperative. I can't recall any instance where it has been operative.

Q. However, it is still in the form, is it not? A. It is still in the form.

Q. Paragraph 2, Commission's Exhibit 21-A—this is the consignment agreement—provides, "consignee agrees to sell the products of consignor to such customers as consignee may select, either for cash or on credit properly authorized, except that consignee may extend credit to any customer he chooses on his own account and to consignors' customers in excess of credit limits approved by the consignor."

Under what circumstances does the consignee sell to the consignor's customers?

Mr. Royall: May I ask the materiality of that question? I am just curious.

Mr. Dias: You will find later on that consignees also sell TBA products.

The Witness: Would you restate your question? (2383) I will try to answer it.

By Mr. Dias:

Q. Under what circumstances does the consignee sell to the consignor's customers? A. He usually sells to consignor's customers because on many of these customers that he delivers to, consignor or we, The Texas Company, have sales agreements of one kind or another. And the purpose of this clause is to assign responsibility to the consignee if he should see fit to extend credit beyond the limits that we have authorized or on account of his own where no credit has been authorized. That is my opinion of the reason for the clause.

Q. It may be that I don't know what a consignee is. Is he a third party? A. No. A consignee operates a bulk plant, usually bulk plant that is owned by the Texas Company although in some instances the plant may be owned by the consignee. We stock that plant with products—gasoline, lubricants, the petroleum products that we sell. And he delivers those products for us and is compensated for such delivery by commissions, so much a gallon the various products. He is a wholesaler performing the same function that one of our salaried bulk plants would perform, except that he is doing it on the basis of compensation through commissions rather than through being compensated by salary.

(2384) Q. Are his customers "C" or "D" accounts or might they be anything else? A. Yes.

Q. Anything else? In other words, a customer could be C, D, or any type customer? A. Yes.

Q. Would you mind describing your Texaco stations generally, your color scheme, for example? A. Our color scheme?

Q. Yes.

Mr. Royall: I didn't hear that.

Mr. Dias: I asked the witness to describe the stations. First the color scheme.

By Mr. Dias:

Q. Do you have a color scheme? A. Yes, sir.

Q. Would you state what it is? A. Our stations are basically white with light green bands around the top and with a dark green course within two to three feet from the ground. It is a white and green combination.

Q. Are they all the same? A. In color?

Q. Yes. A. Not all of them. We have a certain type of station that we ourselves build and have built under our leases with owners (2385) for the sake of uniformity. Many many Texaco dealers operate stations that are in no way in conformity with what we might consider to be our type.

Q. Do you have any idea of the percentage that are not? A. Of all of our dealers?

Q. Would the majority be in conformity with your color scheme, or would the majority not be in conformity? A. I would think of the total 38,400 dealers possibly more are not in conformity than are.

Q. Do you require your operators to wear uniforms? A. No, sir.

Q. You do, however, recommend certain companies where they may buy them if they want them. Is that correct? A. It has been recommended only as a service item to the dealer. We have no interest—we do not care where dealers buy uniforms. We are only interested, if they wish, that they have a convenient source of supply.

Q. But if they do wear them, you recommend the color, do you not? A. We have a standard uniform that we recommend for the sake of uniformity for identification so that the public will recognize a Texaco dealer when it sees one. We think it is good for all dealers that they wear uniforms, and advise it. But we cannot require it.

Q. Do you on occasion assist dealers who are engaged in a (2386) price war or get caught in a price war? By assist, I mean charge them lower prices? A. Yes, we on occasion do.

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By Mr. Dias:

Q. What about lessee stations? Do they always use the prescribed colors and uniforms and advertising insignia and so on? (2387) A. I wouldn't say always. With respect to uniforms and colors?

Q. Yes. A. No, not always.

Q. Colors? A. No.

Q. These are the leased stations that you are referring to? A. We have leases, sir, on many nondescript stations.

Q. Once again, in your opinion, are the majority of leased stations uniform in appearance? A. I would say a majority of them bear considerable uniformity, leased stations, yes. I spoke awhile ago about the 38,000.

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Direct examination by Mr. Boyd (continued):

(2389) Q. Mr. Bartlett, can you tell us how are the accounts which the Goodrich Company—that is, the Texas stations which the Goodrich Company services or sells TBA to—how are they determined? A. Do you mean on the list?

Q. Yes. In other words, the stations that carry the Goodrich line. Your Texas stations, how are they given those accounts? Just which ones are given? A. Basically, to the ones that they can sell to, it is a selling job as far as Goodrich is concerned as to whether they can sell or not.

Q. I know that. What do you do under this contract, the sales commission contract on which Goodrich pays you

the commission? Just what do you do? Which stations do you designate? A. Well, there is a nominating procedure, as I understand it, in the arrangement, whereby certain stations—where a new dealer goes in he is given of course—he has the full right to choose which he wishes.

Q. Which one of what he wishes? A. Of any type, any TBA supplier. Of course we recommend Goodrich or Firestone in many instances. But he is free to choose any line he wishes.

(2390) Q. Do you ever recommend any other rubber company? A. I don't know that we recommend it. We certainly would have no right or desire to discourage it.

Q. Then it is your testimony that the dealer makes the option himself as to which rubber company of the two you recommend. Is that right? A. It is his option as to which of any type of brand of TBA.

Q. What I am saying now is that the Texas Company doesn't nominate the dealer to the Goodrich Company? Is that what you are telling me? A. After the dealer has made his choice then it is nominated to Goodrich and put on the list for mechanical purposes of in time receiving credit for the purchases. That is the mechanics of the thing. But it is not on the list until the dealer has signified his selection of Goodrich, if that is what it is, if he wishes to buy Goodrich.

Q. Let's say you are opening a new station. At that time do you notify Goodrich in advance that you are opening a station at a given location? A. I think there is no procedure in effect in that direction, no.

Q. They are not told in advance? Goodrich is not told in advance? A. There is no regualr procedure. It may be in certain circumstances in certain instances they might know about it, (2391) but there is no setup that I know of whereby they are automatically advised of new stations opening. I know of no set procedure in that direction.

Q. After the dealer decides that he wants Goodrich, that is when you make the nomination, is that right, to Goodrich? A. That is when we put him in touch with the Goodrich people for working out details of shipping, stocking, and pricing and all the other things. And then he becomes a part of the Goodrich list on which we subsequently, if he buys, which we subsequently receive for certain commissions.

Q. Does he always buy from Goodrich? A. No.

Q. What happens when he doesn't buy from Goodrich? A. He buys whatever he wishes.

Q. You don't suggest the other rubber company to him? A. What do you mean by "suggest"?

Q. Recommend. A. We have recommended initially, say, Goodrich. If he chooses not to follow our recommendation—and many of them do not—then we have no recourse, we have no desire to force. Our prime interest is that he handle a well-rounded line of TBA to be a successful petroleum merchant. That is our prime objective. We are in the petroleum business and we are very anxious that he handle a complete line of TBA products for his own good and for our ultimate benefit in having a successful (2392) petroleum retail operation.

Q. Mr. Bartlett, if the dealer is nominated to the Goodrich Company and he doesn't buy, is there a certain period of time within which he is supposed to buy? A. No time.

Q. Or within which they have to sell him? A. There are no time limits of any kind. There is no time limit, there is no set schedule or anything else that I know anything about.

Q. Do you know anything about the 90-day period within which the rubber company is given to sell a Texaco account? Are you familiar with that? A. I do not know too much about it. It is possible. My memory of it is this: At least in the past—whether it is still true I am not sure

—that if one rubber company is not successful in selling the dealer, then perhaps the name is passed to the other rubber company with the idea that they might have an opportunity to sell the dealer, bearing in mind that it is the dealer's full choice at all times whether he has Goodrich, Firestone, any other type or brand of merchandise that is available to him.

Q. Mr. Bartlett, what I am trying to get to are the mechanics of how the plan operates. If you aren't completely familiar with it— A. I am not. I am not familiar with the details of these things.

(2393) Q. Who in the company would be? A. Well, I would think—shall I answer who in my opinion?

Mr. Royall: Oh, yes, go ahead.

The Witness: Either Mr. Wolfe or Mr. Halsell would be better qualified than myself to speak of the details of it. I simply am not working in those every day. I have a few other things to think about.

By Mr. Boyd:

Q. Mr. Bartlett, I am handing you now Commission's Exhibit 3-A and B, which is the B. F. Goodrich commission agreement with the Texas Company. In the very first sentence it states: "In consideration of the aid to be given and the services to be rendered by your sales organization." This is a letter from Goodrich to your company. Will you explain to us what is the aid that the Texas Company gives the Goodrich Company? A. As we have just said, in case of a new dealer, for example, we explain to the dealer that many Texas Company dealers handle Goodrich products because they are nationally advertised and acceptable products; that we can speak for their good service arrangements, if they have them—warehousing and service; that we are in a position to advise the dealer

that in our opinion that particular company, due to the close relationship—we have meetings, and our organization is somewhat familiar with the Goodrich products and so on—that we feel that he would be well advised in his own (2394) interest if he chooses to do so to handle such a line. But at the same time it has got to be made clear, and it is made clear, that he is free to do whatever he wishes to, that he is a free and independent merchant, and that our only service so far as Goodrich is concerned, I would say there, is initially the introduction and then later on, through our knowledge, knowledge of our men, of the Goodrich line and of the TBA sales possibilities generally, we are able to further educate that dealer in better selling techniques, trading of tires, selling of batteries, all other things.

In other words, it boils down I think to two things: the introduction, which is done in the manner I described, and also what subsequent help we can be to that dealer in being a successful merchant handling that line, supplementing the activities of Goodrich's own organization.

Q. Mr. Bartlett, I refer you to the same agreement again, Commission Exhibit 3-A and B, and the second page of it. The first complete paragraph there reads: "Said commission will be paid upon all net purchases made by all of the above-mentioned classifications of Texaco accounts"—and you are familiar with that—"excepting, however,"—and this is the part I am interested in—"such 'D' accounts as are not approved by the Goodrich Company."

Will you tell us what would be in that category? A. Perhaps Goodrich can best explain that. I would think (2395) that their reason for non-approval might be such as this: that they might have a dealer in the area that this would create some confliction with, or something of

that kind. That would be one of the probably main reasons why they would withhold approval. Those come to mind immediately.

Q. That explanation that you have given is stated in this agreement with respect to "C" accounts. But not as to "D" accounts. That is why I was asking you. A. I really don't know what would be their reason for withholding approval.

Q. Someone else would better be familiar with that?

Mr. Royall: He said Goodrich could tell you more about that.

The Witness: That is what I say, Goodrich could give you their reasons about that.

By Mr. Boyd:

Q. Mr. Bartlett, what instructions are given with respect to Texas salesmen cooperating and working together in calling on Texaco dealers with the rubber company representatives? A. Do you mean working with them? Is that what you mean?

Q. Yes, sir. In handling accounts carried in TBA. A. I know of no set instructions with respect to that. As has been testified to earlier today, I am sure there are certain contacts between them, when certain problems arise, and periodic contacts. But as far as that being spelled out or (2396) defined, at least I know of no particular definition of it.

Q. Isn't that part of the assistance which Texas gives the Goodrich Company, for which it receives this commission? A. Well, it happens in some degree but I would think more important would be the work that we do day by day through our salesmen, perhaps when the Goodrich man is not anywhere near to—

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Q. Mr. Bartlett, would you explain to us why there are different rates of commission paid to the several classifications of account reflected in the commission agreement, which is Exhibit 3-A and B? A. Of course I was not present when this agreement was made. I can only say that my opinion is that we are in a position to be of greater assistance in a case of certain (2397) classifications than we are in others, due to frequency of contact or something else.

Q. That is your opinion? A. That would be my opinion.

Q. Is there someone else in it who would be more familiar with that on that point? A. I don't think anyone else in this room—

Q. I mean in the Texas Company? A. Not that I know of. This contract was written in 1943. I can only give you my opinion, which I did.

Q. Do you know what the average rate of commission is that is paid to the—that is, received by you from the Goodrich Company? A. I have never seen it averaged out; no, sir.

Q. Will you tell us then just how is the commission paid that you receive from the Goodrich Company TBA sales and purchases? A. It is paid by check at periodic intervals.

Q. How frequently? A. I am not certain whether it is monthly or less frequently. I can't say. I don't know. It may be monthly, it may be quarterly. I can't answer.

Q. Here again are you familiar with the mechanics of how this thing operates? A. Not exactly, no. I can't tell you how often the payment (2398) comes.

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Q. Are you familiar with advertising? A. Yes.

Q. By your company? A. Yes, sir.

Q. In connection with TBA? Is there any program between your company and the Goodrich Company in that respect, sales and promotion of TBA products? (2399) A. Where we participate?

Q. Yes, sir. A. There is no participation so far as the Texas Company is concerned in consumer advertising as such. Sure, there is certain cooperative advertising that occurs as between Goodrich and Texaco dealers who also happen to be Goodrich dealers. But there is no participation in any direct consumer advertising by the Texas Company. We do other promotional work throughout our organization, educational work and so on.

I am speaking now of advertising to the consumer, the public. We work with them on preparation of copy and advertising mats that might well be used by Texaco dealers that are also Goodrich dealers. We ourselves do not participate.

Q. Is the cost of such work between the two companies shared? Just how is that done? A. Well, it is not—outside of working with the Goodrich Company on the preparation of certain copy that might go in some of their promotional material there is not any sizable expense involved in this particular phase that you are speaking of. We absorb it, what it costs us, and I suppose we absorb the other. There is no cost factor to speak of. It is not a big item. We do not engage in specific consumer advertising or engage in it on TBA.

Q. What would it be that you do participate with them on? Explain that a little more. (2400) A. We don't participate with them on advertising.

Q. What did you have reference to in your discussion then? A. I have seen in recent years some pamphlets or mailing pieces or handouts that Goodrich dealers would procure from the Goodrich Company, either on some direct mail program or furnish to Goodrich dealers. And we

have on occasion, I am certain, advised as to the copy that might be put in there with respect to their representation to the public that they also sell Fire Chief and Sky Chief gasoline and Marfak lubrication and Havoline motor oil. It is just a matter of coordinating with Goodrich on the copy on certain of these local advertising handouts, pamphlets, or what have you.

We do not go into the newspapers on a participation basis, for instance, as a company.

Q. What about the advertising that gets to the point of the advertising Goodrich does, that it may want to place in your Texas stations that are carrying its products? A. That is strictly a matter between the Goodrich Company and the dealer, as to the dealer's participation in Goodrich's direct mail program which might provide for direct mail for station decorations. That is strictly a matter between Goodrich and its dealers, some of whom of course are also Texaco dealers.

Q. I am speaking now of the Goodrich dealers and Texas dealers. (2401) A. That is right.

Q. Let's keep that in mind. On the placement of advertising on the dealer's premises, are there any instructions from the Texas Company to the dealer, or to Goodrich, as to where such sign will be placed, and things of that nature? A. Yes, we have recommended placement of signs as to size and type, but there again we cannot and do not desire to control that situation. Dealers can put what signs they wish.

We have, as a suggestion, as we have suggested to many other areas, that the signs be of certain size as fitting into our general layouts and arrangement of facilities. But again that is a voluntary, suggestive operation.

Q. In those instances does the Goodrich Company consult with the Texas Company before it proceeds to place those kinds of signs or material in the dealer's station?

A. I think the Goodrich Company no doubt has knowledge of the general pattern that we recommend as to size of signs and type of signs. But again it is a voluntary proposition as far as the dealer is concerned. He can put any signs he wishes on those premises and we have no desire to prevent him. But we attempt to advise him with respect to the signs as best fitting into the size, shape, design of our service stations. It is like uniforms. It is not obligatory in any sense.

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(2403) *By Mr. Boyd:*

Q. Going back to the advertising at the station level, in a leased station, Mr. Bartlett, suppose the operator decides that he wants to carry an unsponsored line, advertise it all over the place, what action, if any, is taken by your company in that respect? A. There are many who do exactly what you describe.

Q. Do you attempt to discourage them in any way on that? A. No.

Q. No way whatever? A. We attempt of course to sell them, suggest to them the Goodrich. There is absolutely no compulsion whatever. He has the perfect right to sell whatever he wishes to sell, and many do.

Q. These attempts to sell— A. Simple—may I say that unless we can be of benefit to the dealer through our better knowledge of, say, the Goodrich line, through our working with meetings, with knowledge of products, by insisting on good supply arrangements, unless we can earn the confidence of the dealer and his willingness in his own benefit to do this, we have no desire, we are not entitled and we have no desire to force that issue. Our principal desire is that he is a well rounded dealer in that he is in a position to obtain revenue from all phases of his service sta-

tion business, because if he does not do that he will (2404) ultimately fail and then to that extent we have an unsuccessful dealer from the petroleum standpoint, which is our prime interest and responsibility.

Q. Have any written directions or instructions ever been issued to any Texaco dealers or are they issued at regular times, indicating to them that they are free to carry any TBA they so desire? A. For quite awhile, I am not certain whether it is still in existence, there was a clause in the letter that accompanied their quantity discount oil check in which we devoted a paragraph to the fact that Texaco dealers are free to choose any type of merchandise that they wish in the conduct of their business. That is the one thing that I think of. There have been—

Q. When was that? A. It has been within the last three or four years. I am not certain whether it is still being done or not. But it was done for—we often times revise forms and letters, this was more or less in the nature of a form letter—and I cannot tell you whether it is still in effect or not. But it was in effect a few years ago. That is one instance of how we did notify them of their independence as far as we were concerned.

Q. Would you have—

Mr. Royall: Just a minute. I am not sure that the (2405) witness has finished or whether there is any other sort of publicity or not—

Mr. Boyd: I don't want to interrupt him. Go ahead.

Hearing Examiner Kolb: Have you finished your answer?

The Witness: I might add to what I have said that in a number of instances various TBA jobbers, battery manufacturers, perhaps manufacturers of other TBA items, have written to the Texas Com-

pany to inquire as to our policy, and we have in every instance very clearly written back and have stated in effect that we have no desire nor right to in anyway control the type of merchandise or the brand of merchandise that our dealers sell. And I have noticed that on several occasions that manufacturer or trade association has placed excerpts from our letter or our letter has been quoted completely in such trade publications as, for example, the Gasoline Retailer, or the Super Service magazine, or others. So I believe that it is a well known principle among our dealers—and they have been notified I am sure in various ways—as to our policy which we are very serious about. We are very serious about that.

By Mr. Boyd:

Q. The one that you referred to with respect to oil, a few minutes ago, is that the only one that you can recall in which there was an express notification to that effect? (2406) A. That is the only one that I can recall at this time, yes. Excuse me. Except individual answers to inquiries that might be made of us, you see. I am sure many of those have occurred. Our dealers have asked us, and certainly in response to that we have had no hesitancy in going on record to those dealers. And I am not too certain but that we have put statements to that effect in some of our dealer literature or publications, although I am not able to be certain of that point or to identify it.

But I feel that has been put in some of our dealer publicity or information, although I cannot be certain.

Q. But it has been done maybe pursuant to inquiries, you say? A. Yes.

Q. Have such inquiries of that type been numerous? A. I wouldn't say numerous, no.

Q. Just infrequent. But as a result of those no general policy statements have been issued by your company in an express statement to the dealers to that effect? A. Not that I know of, unless it appeared in our dealer magazine or in some of our other dealer publicity media. It may be. I cannot be certain of that.

Q. Can a lessee dealer of the Texas Company start in business without carrying any TBA supplies? A. Surely can. It is not a very wise way to enter business but he can.

(2407) Q. Has it been done? A. I am sure that it has. I have seen some stations where from looking at their stock I would judge they have virtually none.

Q. This is a new station? A. It would certainly be inadvisable. We would certainly advise against it. That dealer in his own interest should certainly handle some brand of TBA merchandise.

Q. Even an unsponsored brand? A. Certainly. Because he cannot live, he cannot progress in this business unless he has available to him the revenue from that end of the business, and also be in position to serve his customers completely. It is simply not good business. The main point is that we advise strongly that dealers handle a well rounded TBA line. That is the number one thing. We are very, very strong in our recommendations that they do that, without regard first to brand at all.

Q. Without regard to brand? A. Yes, sir. That is the main principle that I wanted to express.

Q. Mr. Bartlett, in a new lessee station opening up, does the Texas Company ever finance or make loans to such lessee dealers for TBA stock inventory to start in business? A. I can say that we do provide loans to dealers as working capital on an easy repayment basis to assist

them in getting (2408) a start in the gasoline service station business. Whether some of that working capital is used for TBA I am not sure. It could be. But it is largely for equipment, for working capital, and the things of that kind. Presumably the Goodrich Company would in its own right and in its own decision afford that dealer such credit as he might need in the purchase of these products, or some other TBA supplier would do the same.

Q. In those instances where there are such loans and a part of them are used for stocking TBA, do you make recommendations there as to what TBA will be carried by that dealer? A. We have no part in it whatever. Our concern in establishing this practice of loaning money to dealers is to get them on their way as successful petroleum merchandisers because, as I have said, it requires five, six, or seven thousand dollars in capital to open a new service station. And in many instances we have seen fit, because the man has the talent, if not the money, to make him these loans for general working capital purposes, equipment largely, in order that he may be established and enter the business.

There is no angle on TBA whatever. Our purpose is to get this dealer started on the right foot as a Texaco dealer, primarily in our interest which is petroleum—oil, gasoline, and so forth. And we have often a very substantial interest in this station, even through ownership, or through long-term lease obligation, and it is most essential that we establish (2409) and make possible a tenant, a lessee dealer, who can make that a successful operation, else we have no success.

Q. In the station of the type you talk about, five to seven thousand dollars, what type inventory, how much TBA inventory would you say would be involved in that type? A. I wouldn't really know. I wouldn't want to say. I am not close enough to tell you that.

Q. Mr. Bartlett, I think earlier today another witness gave us some idea as to TBA personnel in the various lines of the company except at the home office. I wonder if you can tell us at the home office the number of people involved in the TBA program, the Texas Company? A. Of course Mr. Halsell, whose capacity is manager, merchandising, has a large interest in that field. Mr. Wolfe, who is a special representative, TBA, devotes virtually all of his time to it. Of course they have certain clerical assistants —secretarial assistants.

Q. How many of those would there be? A. Probably two people there. Of course it is part of my responsibility and the part of my general sales manager and others on our staff—the assistant sales manager in charge of dealer sales is very interested in that and devotes some of his time to it.

Q. Would you tell us as to yourself and the assistant general manager, Mr. Halsell, and the other man you named—Mr. Wolfe (2410) I believe, as to the amount of time you estimate that they devote to the TBA program? A. It is very difficult to estimate except in Wolfe's case. That is 100 percent.

I would hesitate to say with respect to Halsell. But he has assumed most if not all of the duties formerly of Mr. Bronson, who was head of our tire and sales division. I would say that upwards of 50 percent of his time would be well allocated to TBA and related questions.

Q. How about the assistant general manager? A. His people are in attendance at meetings, they confer with tire company officials from time to time, they are engaged in planning for many of our merchandising conferences. It is difficult to say. I would think that five to ten percent of their time as a minimum would be a good figure.

Do you wish me to describe anything else? Our sales promotion division, which is headed by a manager and an assistant and quite a number of others on his staff, devote a considerable amount of their time to the planning of these dealer meetings that we hold annually.

Q. Who would these people be that you just referred to? A. Sales promotion group in our home office.

Q. In the home office? A. Yes.

Q. How many of them are there? (2411) A. Well, of course in the sales promotion department—

Q. That are connected with the TBA. A. I would imagine that there would be six or seven of those people at least who would be pretty vitally concerned with it, maybe more, because here is what they do: They help to plan these meetings that were spoken of this morning. We hold approximately 700 meetings around this country and we have attendance of maybe 40 to 50 thousand people. Part of these meetings, as explained this morning, are devoted to principles of merchandising, which certainly has application to successful TBA sales. And the same group—sales promotion group—are also engaged in the development of these dealer training conference programs, of which we have three or four a year that were spoken of this morning. So I may be low by seven or eight, but we have a substantial sales promotion department that is engaged in the promotional work, a good proportion of which can properly be classed as TBA.

(2412) Mr. Royall: Your Honor, I do express again the hope they won't rehearse all this hierarchy.

Hearing Examiner Kolb: Haven't you got all of that already?

Mr. Boyd: I was asking him about the home office. That was not covered earlier.

Mr. Royall: I think you are wrong about that but that is already in. There is nothing more we can do about it.

By Mr. Boyd:

Q. We have the percentage of time devoted by the various TBA people. The only one left is yourself. What about yourself? A. You mean that I personally spend?

Q. Yes. And describe it for us. A. I would say that anything that I do that would be of any assistance in the way of planning for better dealer training or dealer relations or in the over-all approval of better training or service to our dealers, it is directly or indirectly related to TBA. But if our dealers are successful they of necessity and naturally will be successful TBA merchants.

The whole sales structure that I have done much work on, having to do with the development of the merchandising group salesmen that were spoken of this morning, and other organizational changes that are planned for the future, most of that has as its objective a more successful retail service station performance because essentially this company is a dealer (2413) company. Eighty percent of our products at least move through Texaco dealers, branded as such. We sell nothing to unbrands and to things of that kind. So our dealer success is our success. And much of my time, of necessity, is devoted to consideration of things that will affect and benefit the Texaco dealer. I expect that I can give you ten or fifteen or twenty percent of my time along those lines.

Q. Mr. Bartlett, do you know whether or not the salesmen calling on the dealers are instructed to report instances—and particularly let's confine it for the moment to lessee dealers—to report instances where those dealers carry on sponsored TBA? Do they do that? Are such reports submitted? A. I know of no regular report of that nature.

Q. They are not instructed to make such reports? A. No. Not to my knowledge.

Q. Would that be true as to contract stations, too? A. Oh, yes.

Q. You say you know of none? A. I know—there was something introduced this morning, or yesterday, where in an individual instance the assistant territorial manager, I believe, wrote and asked that a list be prepared of dealers and consignees and distributors who were not handling so-called sponsored lines. There may be—in this instance—there may be other spasmodic instances of it where they gather such information. But I know of no regular (2414) established procedure where that is done or called for.

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(2415) Q. Mr. Bartlett, will you tell us just what is the value of the Goodrich TBA program to the Texas Company? A. To the Texas Company or the Texaco dealers?

Q. To the Texas Company. A. Will you say that again?

Q. I want to know what is the value of the Goodrich TBA program to the Texas Company, your description of it. That is, the Commission arrangement between them? A. I think the value of the Texas Company first is that Goodrich is a widely distributed, nationally advertised, well developed brand of tires, batteries, and accessories. They provide fine merchandising services, advertising programs for our dealers, and provide convenient supply arrangements for our dealers and wholesalers. I think it is valuable to us as a company because it is primarily valuable to our dealers, because they provide a service to our dealers that helps them to become better merchants, to make more money and to be successful, and through

their affording our organization opportunities to learn of their products and the qualities of them, through meetings and other things, they help us to help the dealer too in doing a better job.

In short I think they provide a product and services that mean much to our dealers and of course aside from any (2416) commissions that we obtain, which we naturally do, primarily we are interested in services to the Texas Company dealer to make him a healthy individual businesswise because we have many stations, we have high investments, and one of the great problems in the industry today is keeping these stations in operation and successful. So I say that summarizes, at least in my opinion, what value it is to us.

Q. Doesn't it eliminate warehousing and distribution facilities? A. I said that they did afford warehousing and service arrangements which I meant in terms of that—warehousing, yes. Naturally if they deliver to dealers as opposed to our carrying and selling tires, they afford that particular convenience to our dealers as would any other supplier of TBA afford that convenience to our dealers.

Q. Has the Texas Company itself ever sold TBA, that is to its outlets, to maintain this distribution system, as some companies do today? A. No, we never have.

Q. You never have? A. I think there was a short period when we took title to the merchandise and resold it to the dealer. That is a long time ago. But—

Q. Prior to these commission arrangements? A. It must have been. Because it is just faintly in my (2417) memory. But we never stocked them. We have never stocked tires in our warehouse.

Q. Then before the commission arrangement, can you tell us just how the TBA was handled by the dealers if you know? A. I don't know.

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(2422) *Cross-examination by Mr. Royall:*

Q. Mr. Bartlett, have these policies announced and described in the government's Exhibits 48-A through J, and 49-A through D, been the policies of the company since that time? A. Yes, sir.

Q. And before that time? A. We have had a consistent policy, before and after those letters.

Q. Have those policies been followed to the best of your knowledge? A. They have.

Q. Have they been often reiterated? A. Yes, sir.

Q. Do you know of your own knowledge of any case where a dealer complained of being coerced?

Mr. Dias: I object, your Honor.

By Mr. Royall:

Q. In your present capacity?

Hearing Examiner Kolb: Objection overruled.

A. No, I have no knowledge of any case.

By Mr. Royall:

Q. Do you know that there have been complaints from some suppliers and they have been investigated? A. Yes.

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(2423) Q. Do you know whether or not the investigation showed any of those instances to be justified? A. I have received no information to that effect.

Q. Do you know in your present capacity, or from anyone through which this knowledge would come to you since 1951, where any lease has been cancelled by reason of any TBA circumstances? A. No, I do not.

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By Mr. Royall:

Q. Were instructions issued at any time by the Texas Company to its salesmen to the effect that anyone violating these policies, including the independence of the dealers, would be (2424) subject to dismissal from the company? A. Yes. That information has been sent to our salesmen.

Q. Were there efforts made in some of your lower echelons as late as 1955 seeking to get that policy changed, that policy of dismissal? A. I recall one letter that one of our managers felt it was a little severe.

Q. And did you refuse to change your policy? A. A letter was written by one of my assistants, Mr. Fritts, very determinedly taking issue with it and saying that we would not and could not change the policy.

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(2426) *By Mr. Royall:*

Q. Mr. Bartlett, in your examination by the government you were asked about a new credit card for 1955, which I believe mentions the name of Goodrich and Firestone. I believe you also testified that you had a card in the 40s, up to 1947 or 49, similar to the character that you have now with the one naming them.

Will you tell us why the change was made in 1955? A. The reason the change was made is that effective January 1, 1955, we, in order to meet competition of other oil companies, adopted a policy of allowing tires and batteries to be sold on a deferred payment basis on our credit cards. Those terms extended in the case of products I think in the value of up to $30.00 we would allow 30-60-90 day terms. That is three payments for a period of 90 days. If the invoice value of the merchandise was more than $30.00, then we would afford terms to the purchaser of six months credit to be paid one-sixth each month.

We knew at that time—and it has subsequently been verified—that this would involve a sizable amount of money tied up in receivables for long periods of time. We felt that in affording our dealers this service, in order to keep them competitive, that our only opportunity for any form of compensation would be to specify that in the handling of these sales that they would be confined to the two brands mentioned. That (2427) was the sole reason for making the change in the credit card on January 1, 1955.

Q. Because on those two brands you got commissions? A. Yes, sir.

Q. Mr. Bartlett, in determining the renewal of a lease what is the major factor? A. The renewal of what sort of lease?

Q. Of the lease to a service station? A. To the dealer?

Q. To a dealer I mean. A. The primary factor is how successful he is from the standpoint of the sales of our products.

Q. Of gasoline? A. That's right. Gasoline and motor oil.

Q. Is the question of TBA a significant factor in making that determination? A. I would certainly think not.

Q. Do you have a form for renewal of a lease to be signed by the service station? A. We have a form that is submitted to our division office carrying the recommendation of the zone manager as to the continuation or not of a lease with a dealer. Yes.

Q. And is that form upon which you finally act, and whether or not you renew a lease, is that one of the factors? A. Yes.

(2428) Q. Does that form contain any mention of TBA? A. No.

Q. Does it represent your policy in renewing leases? That form and the data on it? A. I would say that it does.

Q. And is that your practice as well as your policy? A. It certainly is.

Q. Some mention was made of occasional financial assistance in price wars. State whether or not that assistance is either dependent on or affected in any manner by the TBA situation of the station? A. It is not. It is never considered.

Q. Mention was made of the fact of making loans in some instances, particularly to new stations, in order to provide them operating capital for equipment and other things. State whether or not in determining on those loans, the TBA situation is given any weight. A. I would say that it is given no weight at all.

Mr. Royall: Your Honor, this is the final set of questions.

By Mr. Royall:

Q. You were asked to state the reasons for the TBA commission plan which Texas has. What is your main objective? A. Our main objective in the whole situation is that our dealers are more successful, that is, that they will through it—

(2429) Q. I mean the main objective from your standpoint? A. It is to increase our petroleum sales through more successful dealers.

Q. And what is the indispensable element in increasing your petroleum sales? A. In today's competitive market a dealer has no opportunity to build a well-rounded increased volume business unless he is in a position to offer to his customers TBA—batteries, tires, accessories and other automotive needs.

Q. Without those TBA items what would be the result in the volume of business that a dealer would do?

Mr. Dias: I object, your Honor.

By Mr. Royall:

Q. Based on your experience.

Hearing Examiner Kolb: Objection overruled.

By Mr. Royall:

Q. You can answer. A. Based on my experience, I would say that a dealer who was not in a position to offer a balanced product line and services could not hope to succeed except in unusual situations where he was situated on a highway out in the country or something of that kind, where he only sold gasoline. But in the average situation he could not hope to be successful unless he sold a well-rounded line of TBA products of some brand.

Q. Is the welfare and progress and sales of a dealer assisted (2430) by carrying standard and well-known brands of TBA? A. I would certainly think so. That is my belief.

Q. Has that been your experience? A. That has been my experience.

Q. Is a dealer's progress, welfare and sales favorably affected by confining himself to a few brands or one brand rather than many? A. I expect—

Q. If so, in what way? A. In several ways. In the first place, a dealer who stocks too many items or too many lines or too many brands unnecessarily ties up capital in duplication of stocks. Secondly, from a sales psychology standpoint, any merchant in my opinion has a better sales argument, is in a better position to present the merits of a particular brand rather than to say that I have two or three or four brands; take your choice.

It is better selling psychology and it can be more successfully sold.

Q. Did you mention investment? A. Yes, because my first point was that it eliminated the necessity for duplication of inventory, and also another important factor is that by confining purchases to one line—whatever that be—he gets advantage of any quantity discounts that might be available to him.

Q. In what way, if any, does a single brand affect the easy (2431) or difficult operation of a station, accounting and otherwise? A. Simplification of line, less the accounting, less inventory keeping, less storage space consumed by the—again the duplication of items. The whole operation accounting-wise, storage-wise is simplified.

Q. Are those matters we have mentioned of vital importance to the dealer? A. I believe so, certainly. Yes.

Q. What is the chance, on averages, of a dealer staying in business today without a sound TBA program?

Mr. Dias: I object.

By Mr. Royall:

Q. If you know?

Hearing Examiner Kolb: Objection overruled.

A. The chances are very poor.

Mr. Royall: That is all, your Honor.

Redirect examination by Mr. Dias:

Q. We talked about a form for renewing leases, Mr. Bartlett. Is that correct? A. Yes.

Q. I don't suppose you have a copy here? A. I think they have one over there.

Mr. Royall: We will supply that.

Ben Halsell, Recalled, for Commission—Redirect

(2432) *By Mr. Dias:*

Q. Also you mentioned that in renewing leases TBA was not a significant factor. Did you mean that it was taken into consideration? A. Not a factor, I should have said.

Q. You are changing that part of your testimony? A. I am changing.

Mr. Dias: That is all, sir.

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(2438) BEN HALSELL was recalled as a witness for the Commission and, previously having been duly sworn, was further examined and testified as follows:

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Redirect examination by Mr. Dias:

Q. I hand you Commission Exhibit 100-A through C, Mr. Halsell. Would you explain what that is? A. This is a lease form usually referred to by Texas Company people as a G-77 form. This form is used in two ways. First, it is used as a lease instrument on properties from the landowner to the Texas Company of those properties usually already (2439) in existence and of a non-conforming nature.

Q. Properties already in existence? Do you mean with buildings on them? A. With buildings on them and buildings do not conform with the Texas Company type buildings. That is one use.

The other use is in connection with the same-party leases that we have discussed here from time to time. On this form we lease a property from a dealer and in turn sublease back to him on a lease form not represented in this group.

Q. Are those the only uses for that? A. As far as I remember, yes.

Q. Now, would you look at 101-A through C and tell us whether or not that is the same type lease or is that used for another purpose? A. G-77-B, as we refer to it in the company, is a form on which we renew leases; leases that we have held on properties. Other leases expired and this form is used for the renewal.

Q. The type lease you are talking about here now is similar to the lease 100-A? In other words, the same type property? This is not the lease running from Texas to an operator, in other words? A. No. This lease covers a property, the lessor of which is the property owner. The lessee being the Texas Company.

Q. 102-A, will you tell us what that is? A. This is a form referred to as G-77-E. As far as I know (2440) this is used in somewhat the same way as the form previously described.

Q. In other words— A. There are some minor differences here. Frankly, I can't discern them.

Q. Substantially it is for the same purpose— A. As far as I know.

Q. (continuing) —as Commission Exhibit 101-A? A. And the lease form is substantially the same.

Q. And 103-A to C? A. This form is commonly known within the Texas Company as form G-77-A. We use this form in negotiation with a lessor, which negotiation begins at the very outset. That is, this form is used when the property is undeveloped and when we are bargaining with the lessor to start from the ground up and create a service station structure. The building is usually—the building is always one of our regular typical buildings.

Q. The company itself erects the building? A. No, sir. That form is used when the lessor erects the building.

There are provisions there for setting forth the type of building.

Q. Are these all Texas forms? A. They are.

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(2442) *By Mr. Dias:*

Q. Do you know when Texas first nominates a station to the rubber company? A. Yes. I think I understand that procedure.

Q. Will you tell us when that occurs? A. Let's take the case of the new station, a station that is nearing completion. At that time we talk to perhaps one or two or three prospective dealers and finally come to terms with one, general terms, a person who seems to be best qualified from the various angles to be a successful dealer.

Our first conversations with him involve the many aspects of service station operation, particularly pertaining to the marketing of petroleum.

We talk to them about all those details: the need for proper stocks of petroleum merchandising; the need to carry on a proper advertising program; the need to give good service and to maintain a station that is clean and to conduct his registered restroom program in such a way as to give the best service to the motoring public.

All those things are gone into with the dealer and he of course agrees that they are sound business practices. (2443) After that discussion has been concluded we come to the matter of a choice, his choice of TBA materials.

At that time we explain to him that the B. F. Goodrich Company is ready and perhaps willing to serve his needs. We talk to him in very general terms about the company as a national organization, its products are well known and well accepted by the motoring public, and if he agrees then that the Goodrich line is one which might fit into his

overall operation we in turn ask the Goodrich salesman to come and have a talk with him.

Q. When did you ask him to come and have a talk with him? Prior to the time the station opens? A. Yes. Usually it is before the station opens.

Q. You mentioned that if this prospective dealer agrees to your suggestions as to the proper way that he should run his business—suppose he doesn't agree? A. I beg your pardon?

Q. Let us assume that the prospective lessee does not agree that your ideas of what he should do to run his business are appropriate for him. What is the situation then?

Mr. Royall: Your Honor, I think that question ought to be clarified. You don't mean whether he would use Goodrich or not but whether to run the station?

Mr. Dias: Yes.

A. There is a general agreement there on basic business (2444) principles, and if he doesn't agree he just withdraws.

By Mr. Dias:

Q. He withdraws? He doesn't take the station? A. If that is his decision, yes.

Q. Having submitted his name to Goodrich, how much time is allowed Goodrich to consummate a sale? A. Nomination of the account to Goodrich is in effect the placement of that account on the Goodrich prospective list, and it means simply that if the sale of Goodrich products is made to that dealer that that sale qualifies for the sales commission.

Q. Let us assume, though, that the lessee is on the Goodrich approved list and you have nominated the lessee and he is on the Goodrich approved list. But let us suppose that the lessee doesn't purchase for sometime. How long is he permitted, so to speak, or how long is Goodrich allowed to dicker with the lessee? A. For a reasonable time. I suppose in defining the word "reasonable" in this case, sixty, ninety, 120 days.

Q. May I suggest 90 days? Isn't it true that they usually allow the rubber company 90 days to make a contract with the lessee? A. It isn't that specific. It is a variable period of time.

Q. At any rate, there is a period of time during which—

Mr. Royall: Your Honor, the question I am sure (2445) wasn't intended to create a false impression. The witness didn't say that they allowed anybody anything. That is the language of counsel. "Allowed" contains an inference.

By Mr. Dias:

Q. Suppose you tell us in your own language then what the period of time is, and is it allowed or how would you describe it? A. As I said before, the period of time is a reasonable one—60, 90, or 120 days.

Q. Let us assume that whatever the period is, there has been no sale consummated. What happens then? A. Then the other company, the Firestone Company, is invited to try to make a sale.

Q. On the initial contact with the new station operator, does the Texas salesman accompany the rubber company salesman in calling upon the lessee or prospective lessee? A. What do you mean by "initial contact"?

Q. It is my understanding that the oil company salesman, the Texas Company salesman, introduces the rubber

company salesman to the prospective lessee on the initial contact. Is that correct? A. I still don't know exactly what you mean, Mr. Dias, by "initial contact." We have been in touch with the dealer previous to any B. F. Goodrich connection there.

Q. I am talking about the initial attempt by Goodrich to (2446) sell or start its sales talk to the lessee. A. I get that. The answer is there is usually a personal introduction.

Q. By "personal" you mean a Texas salesman or other representative in company with the rubber company representative? A. That is usually the case.

Q. Is that true in regard to all type outlets—"C", "D", distributor, consignees? Is the procedure the same? A. I don't want to ask questions but which procedure?

Q. This procedure of nominating the new account, accompanying the rubber company representative? A. The answer is No.

Q. When does that occur? Does it happen with "C" dealers where there is a lessee involved?

Let me make it clearer. You are opening a leased station. That account has been nominated to the rubber company. On that occasion, on the occasion of the first visit of the rubber representative—the rubber company representative, I believe it is your testimony that the oil company representative accompanies the rubber company representative and introduces him to the prospective lessee? Is that correct? A. Usually.

Q. That is the lease operator? Now what is the situation in regard to the "D" station or contract station, so-called "D" or contract station? (2447) A. In that situation, if we can be of service, if the dealer is such a person and if he has such a physical setup in his station as to lend itself to the successful sale of TBA products, then we would be glad to give that same service.

Q. You would be glad to do it. Are you saying that it isn't the normal thing to do? A. No, I am not. It is the normal thing to do.

Q. It is normal to use the same procedure in regard to "D" or contract accounts? A. Provided the facility and the person lend themselves to a successful venture in the sale of TBA materials.

Q. Will you explain that a little bit further? What is the criterion in your opinion for a contract operator to be a successful operator? A. Many of the accounts designated "D" are not service stations in fact. They don't have the complete facilities for the one-stop service performance that many of our "C" stations have.

Many "D" locations are located far removed from Goodrich supply points. The very nature of some of the "D" accounts excludes them from this kind of an operation. And when I say "nature" I am referring to the roadside account or maybe the account that is associated with a farm implement sale operation; the occasional location where you see two pumps in front of a roadside tea room.

Q. Two different pumps? A. No, gasoline pumps.

(2448) So the point is that so many "D" accounts are not qualified either from the standpoint of personnel or type of operation or physical property to permit them to engage in a successful TBA operation.

Q. And in that instance you do not nominate them to the rubber company, is that correct? A. That is correct.

Q. Can you give us some idea of the number of such accounts? A. I might give you an idea, but I would be estimating it. I think perhaps you can have a better figure in the future from our statisticians.

Q. What about consignees now? Are they treated in the same way as the lessees in regard to nomination to the rubber company? A. Yes, I guess they are.

Q. And the distributors? A. Yes.

(2449) Mr. Royall: Would you read the previous question and answer?

(Question and answer read.)

The Witness: I would like to say in the same general way. I don't know the details.

By Mr. Dias:

Q. Would there be any material difference? A. I think not.

Q. What is an approved account from the Texas viewpoint in regard to the TBA program? Would that get back to the type stations just not fitted to handle the TBA program? A. The approved accounts are the ones that are.

Q. You are correct. A. That is true, yes.

Q. That is what would be involved in that? A. Yes.

Q. What is an active account? A. An active account is one that buys.

Q. Within any given period or at any time? In other words, is there a limitation? A. I think the limitation there is six months.

Q. If he does buy within a six-month period he is considered an active account. Is that correct? A. I think that's right.

Q. What is an associate account? (2450) An associate account is an account such as would be supplied by a Texaco distributor, or an "E" account.

Q. "E" is a distributor, is it not? A. Yes.

Q. Would he also be one supplied by a consignee? A. Yes.

Q. Is that a term used only in connection with the TBA program or is that also common to the petroleum end of

it? A. That is a term used—which is limited to the TBA program.

Q. To the TBA program? A. Yes.

Q. Can you tell us what a direct account is, and indirect. Let us have the direct account first. A. A direct account is one that is served directly by a B. F. Goodrich supply point, whether that supply point be a store or a company warehouse or one of their designated dealers.

Q. When you referred to store you meant a B. F. Goodrich company store? A. I was thinking of a retail store. They operate stores that retail. Those stores at times are designated as supply points for Texaco dealers.

Q. The indirect account, will you describe that please? A. I don't know—we don't use that term, "indirect".

(2451) Q. Texas does not? Do you think that might be a rubber company term? A. Frankly, I don't recognize the term.

Q. At any rate, you don't know what an indirect account is? A. No.

Q. You testified that the Texaco representative accompanied the rubber company representative on an initial contact or interview or talk or introduction to the new operator? A. Yes.

Q. And you confined that I believe to an instance where there is a new station. Is the situation the same where a station changes hands? A. Substantially, yes.

Q. And I assume it would be the same where a station has just been rehabilitated, that is, redecorated, rebuilt, refurbished, and a new operator comes in? A. If a station has been rehabilitated and if facilities for the successful handling of TBA are created in that rehabilitation process, then the same procedure would follow.

Q. During that 90-day period and after the initial introduction, does the petroleum company representative again

at any time usually or generally talk to the new operator in regard to the prospective TBA program? A. Oh yes, there are many details to be discussed, many arrangements to be made. There is as much initial assistance to (2452) be given. I suppose much of that assistance would come in the form of educational work, help with displays and the institution of the inventory control plan, perhaps. Although that work, too, is certainly done by the Goodrich salesman. But there is a certain—

Q. At the same time? A. No. The Goodrich salesman does most of his work at the outset. From that point on the principal contact is by the Texaco salesman who carries on and services the account.

Q. How often does a Texaco salesman call on a Texaco outlet? Let me rephrase the question.

How often does the Texas salesman call on the outlet to take his orders, for example? Is there a periodic time, every week, every two weeks? A. I suppose the answer to that is every week.

Q. They call once a week to take an order? A. Once a week to every ten days. Not with the specific thought to taking an order. There is so much to be done at the merchandising level. It is not so much putting product into the station as it is to show the dealer how to move it out of the station. The reordering process is less complicated than that.

Q. Does that educational work also involve TBA? A. Yes.

Q. I am not sure that you have the information I want on (2453) these questions. Do you know how often these commission overrides are paid? A. Yes.

Q. You do know that. How often are they paid? A. Monthly.

Q. Do the checks come into the home office or to the various territorial offices, do you know? I assume they are checks.

* * * *

The Witness: They come to the Texas division office.

(2454) *By Mr. Dias:*

Q. Do they come from a rubber company division office and go to a Texas division office. A. I think the rubber company division is the district.

Q. And the District? A. From the rubber company district to the Texas company division.

Q. And then the Texas field office, do they forward that to the home office or is it kept in the field office account? A. It is kept in the field office account.

Hearing Examiner Kolb: Read the last three or four questions and answers.

(Questions and answers read.)

Mr. Royall: That is correct.

By Mr. Dias:

Q. Does Texas check the accuracy of these payments? A. Yes we do. We don't quite arrive at an accurate check but we make an endeavor in that direction.

Q. What do you do? In other words, what sort of a reporting system do you have to check the payments made by Goodrich? A. Field people are informed of the credits designated for their accounts, and then field people make an effort, although it isn't a very effective one at times, to verify the accuracy of the credit.

Q. Which particular field people? (2455) The salesman is the man who does that.

Q. Are these reports and these figures used to determine a ratio of sales of TBA products to petroleum? I have heard references of so many gallons of gasoline, so many dollars of TBA. Is that how you determine what the ratio is or should be? A. That is the way we determine what the ratio is.

Q. Then how do you determine what the ratio should be? A. There are certain authorities on that, as we saw yesterday or the day before. That balanced selling ratio thing is one guide.

Q. Earlier you testified that when a new account opens you notify Goodrich of the possibility of a sale, of a prospective account. A. Yes.

Q. How do you determine which of the rubber companies to nominate that account to? A. Well, the dealer is asked if he feels any preference there. And if he does of course that preference is observed. If he has no particular preference the salesman will confer with the dealer and between them they will make a little analysis of the whole situation.

Q. Between whom? Between the salesman and the operator? A. Between the salesman and the dealer. I say between them because the salesman, with his wider experience, is able to give the dealer certain valuable guidance There is a (2456) consideration of the competitive situation surrounding the dealer location. If the Firestone Company is known to have two or three very active dealers in that same community, that seems to suggest that Goodrich would be a better product for a dealer to handle. If the condition is reversed, then Firestone might get the call.

If the dealer, as we have said so many times before here, has had a prior experience with some rubber com-

pany other than Firestone or Goodrich, and prefers that, he takes that.

Q. And in that instance does the Texas salesman attempt to get a personal interview for him with the account that he has chosen? A. If the dealer indicates such a desire, he gets it.

Q. In other words, the Texas representative will notify that supply point, that unsponsored brand, that here is a lessee or an operator that would like your products? A. Yes. I think though I had better continue to finish the answer to your question.

There are other factors that would enter into a decision as to what brand might be handled.. I think local people have a big bearing on that, on the value of one franchise versus another. One company may have a very active and a very cooperative, a very helpful local personnel, which would certainly influence a choice of supplier.

So you have all those factors. They are all taken into (2457) consideration by the dealer in conference with the salesman, in consultation with him. And every effort is made to arrive at the supply situation that will best fit the dealer's need.

(2458) Q. In those situations again if there is no sale consummated in whatever the particular period is, is the account referred to another supply point? A. Yes. Not another supply point but—

Q. Another supplier? A. Yes.

Q. That is true even if the original choice was an independent, is that correct? A. Yes. Those dealers who select another brand, they remain prospects.

Q. My point is that if they have determined in the first instance to purchase an unsponsored product, your representative arranges the initial introduction for that supplier. But let us assume that somewhere along the line

the sales attempt breaks down and the operator doesn't buy from that particular supplier? A. From that particular unsponsored?

Q. From that particular unsponsored supplier. In that event does Texas follow up after 60, 90, 120 days and attempt to find another supplier? A. The prime consideration there is to get the dealer into TBA business, because it is an integral and a necessary part of his operation. That is No. 1.

If we can't do it one way we want to do it another. It is that important.

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(2459) *Recross examination by Mr. Royall:*

Q. Does your experience indicate how many of your dealers buy unsponsored goods? A. General Royall, it is a fact that many—a substantial number of our dealers—don't buy any Goodrich products at all. And if you will forgive me the words, they don't buy any Firestone products at all. They buy brands that are totally unrelated to those two companies—many of our dealers. And most of our dealers—

(2460) Mr. Dias: I think that answered the question.

Mr. Royall: I don't know.

Hearing Examiner Kolb: Let the witness finish his answer.

Mr. Royall: Let the witness finish his answer.

Mr. Dias: He said "many." I believe that is a response.

Hearing Examiner Kolb: Let him complete his answer.

A. (continuing) And most of our dealers buy product that is neither associated with Goodrich or Firestone.

Ben Halsell, Recalled, for Commission—Recross

By Mr. Royall:

Q. In the case of those associated with Goodrich or Firestone, a very large proportion of them buy partially other than sponsored goods? A. The vast majority of those dealers buy so-called "unsponsored materials."

• • •

(2462) Q. In your selection of a new filling station, a new service station, do you impose any condition of any character as to whether or not the lessee of that station—that is, the person to whom you lease it—handles Goodrich or Firestone or any particular brand? A. There is no imposition there whatever.

Q. This personal introduction that you make to Goodrich, or to whatever company you introduce, does that occur after you have discussed the matter with the service station, the manager or owner, to determine his preference for TBA? A. Yes, General. That is done afterwards. The desire there is to recognize the dealer's preference.

Q. You were asked by Mr. Dias about the service which your salesmen render to service stations who had TBA programs. Will you give that, please, in more detail? What service do your (2463) salesmen render to stations who handle TBA, regardless of what brand?

Mr. Dias: I object to the latter part, your Honor. That is leading.

Hearing Examiner Kolb: It is cross-examination.

Objection overruled.

Mr. Dias: This is a company official.

Hearing Examiner Kolb: I don't care whether it is company official or not. We are dealing with cross-examination now.

Ben Halsell, Recalled, for Commission—Recross

Mr. Dias: That will be your ruling continuously?

Hearing Examiner Kolb: That is my ruling.

By Mr. Royall:

Q. Will you state not in too great detail the various types of service that your salesmen render to these service stations which handle TBA? A. I am glad you made that clarification because it is a long story, otherwise. I will give it to you briefly.

There is the matter of the inventory control plan which the salesman cooperates with the dealer in administering. I believe it has been brought out in this testimony that our salesmen are permitted now to actually solicit orders from the dealer; orders designed to bring his basic inventory up to its proper designated level.

There are always questions of promotions and new (2464) products and there are meetings which the rubber companies hold from time to time, conducted by their executives and sales personnel.

Our people cooperate in announcing the time and place of those meetings and are, I think, quite influential in seeing that our people have the advantage of the promotional and product information that is provided there.

We all know that products well displayed are partly sold and our people have worked with dealers in assisting them in the formation of effective display materials which I suppose you might term a service rather than a sales item.

I know our people always stand beside the dealer. They stand at his side in his negotiation with his supplier.

Rubber companies sometimes get a little bit careless about supplies and orders and service and what not. It is the responsibility of the Texaco salesman to use whatever

influence he has with the rubber companies to get them to give this man the service that he needs to do the best possible sales job.

Q. How about the service and assistance rendered by the operator himself to the public? A. You mean the service and assistance rendered by the operator himself to the public? A. You mean the service he renders to the public?

Q. Do you confer about that? A. Indeed we do. It is one of our very most important activities among our merchandising and general salesmen. So many motorists don't know the Texas Company other than the Texas (2465) Company dealer and it is always important that the dealer put his best foot forward with the public to increase his repeat business and his overall volume.

Q. Does that apply to the TBA items, also? A. Yes, sir. As a matter of fact, General, there is a service that the Texas Company dealer advertises to the public known as Texaco Circle Service. You have no doubt seen that advertising in some of the national magazines.

Texaco Circle Service is nothing more than a service routine that the dealer is encouraged to perform with each motorist who drives into his yard. That service provides that the dealer go first to the left-hand side of the car, and while cleaning the left-hand side of the windshield greet the customer and take his order for gasoline.

Mr. Dias: I don't see the relevancy of this, your Honor.

The Witness: There is a relevancy.

A. (continuing) And then as the dealer leaves that side of the car and walks around to the left rear, where he puts the gasoline in the car, his first act there is to observe the condition of that left rear tire.

As he completes the circle of the car he observes the condition of all four tires. In the process of that he uncovers a need for tires, if one exists, and that circle service, that activity, provides the first step in the dealer's (2466) sale of tires.

So I think there is a connection between the service the salesman renders the dealer in teaching him that circle service routine, and reminding him how important and how valuable it is, and in the things we are talking about.

By Mr. Royall:

Q. Are there other examples except tires, without going into detail, affecting TBA? Other items of TBA? Does the service uncover the need of them? A. Oh, yes, there are many others. Fan belts, oil filters, spark plugs and the like. They are educational jobs that we do in connection with the sale of those items.

Q. Does that in general cover the principal items of service by your salesmen to the service station? A. That is a long story, General. It highlights it.

Mr. Royall: Your Honor, we will introduce later and go into that in more detail.

By Mr. Royall:

Q. You spoke yesterday, in answer to Mr. Dias, about dealers' training—and I think Mr. Bartlett also mentioned it. Is that tied in with the same sort of service? A. Yes, sir; it is. But it is a long story and it is pretty much a story of its own.

Q. I believe yesterday you were asked on what was designated as redirect examination, about the time spent by the various (2467) people in connection with the service on TBA. As I recall, you were not expressly asked

about merchandise salesmen as a class, but were asked just about the regular salesmen? A. Yes.

Q. What percentage of the time would you say the merchandise salesman gave to TBA? A. I think I said yesterday that salesmen in general gave 10 or 12 or 15 percent of their time to the TBA merchandising problem.

In the case of a merchandising salesman I am sure that figure is low.

Q. What would you say it is? A. I think it goes more nearly in the vicinity of 25 percent.

Q. You were asked yesterday also about a bonus given to salesmen and managers in connection with TBA. Is that a bonus or a prize? A. I think I called it a bonus yesterday. It is actually a prize.

Q. What is the maximum amount that anyone, regardless of position, can win in one year as such prize? A. It wouldn't be in excess of $100.

Q. Does it go as low as $15 or $10? A. I think some of the prizes go as low as $10 or $15; something like that. We have those contests once a year.

Mr. Dias: What was that?

(2468) The Witness: I think those contests are run about once a year. There is a very unimportant amount of money involved.

By Mr. Royall:

Q. Do you know from your knowledge and experience whether the dealers themselves, those that own and operate the service stations, know that you consider them independent businessmen? A. General, yesterday it was pointed out, I think, that—not pointed out but the point was made that maybe our communications were not good in connection with our dealers. I contend that our communications are good.

* * *

Ben Halsell, Recalled, for Commission—Recross

(2469) *By Mr. Royall:*

Q. What proportion of the service station dealers do in fact buy non-sponsored products? A. The vast majority of them do.

Q. I believe you defined this morning the B and E accounts, did you not, which Mr. Bartlett— A. I don't believe I did.

Q. Mr. Bartlett was asked about it yesterday and referred it to you or Mr. Wolfe.

Will you tell me what they are? A. "B" account is a Texas Company consignee. An "E" account is a Texas Company distributor.

Hearing Examiner Kolb: Does the filling station come within either the "B" or "E" account?

The Witness: The answer is No.

The Texas Company consignee is a wholesaler. He sells to dealers.

The Texas Company distributor is a wholesaler. He sells to dealers.

Hearing Examiner Kolb: Which one is the filling station, which account?

(2470) The Witness: "C" and "D".

Hearing Examiner Kolb: "C" and "D" are filling stations?

The Witness: Yes.

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(2474) *By Mr. Royall:*

Q. The first matter relates to the question, Mr. Halsell, about active accounts. As to that I believe the time that has elapsed before you consider it inactive varies doesn't it? It varies from time to time? A. Yes, I think so.

Q. If an account becomes inactive what happens if they again buy merchandise? Does it again become active?

A. The account is inactive, if it then purchases, it then becomes an active account.

Q. Mr. Halsell, if a dealer, either when he first becomes a dealer or at any time—let's say first when he becomes a dealer, if he prefers some other brand other than Goodrich or Firestone, do you still take him on as a dealer? A. As I have said, our prime interest is in—

Q. Do you still take him on as a dealer? A. Yes.

Q. Are there instances of that? A. Yes.

Q. Does the fact that he does not designate either Goodrich or Firestone affect you in taking him as a dealer? (2475) A. No.

* * *

Further redirect examination by Mr. Dias:

Q. You mentioned that salesmen are now permitted to solicit orders. Were you referring to TBA orders? A. Yes.

Q. Do the salesmen solicit orders for only the sponsored brands? A. If the salesman can perform a service for a dealer who is handling a product other than Goodrich or Firestone, he will do that.

Q. Is this information given to the dealer, that the Texaco salesman will write up his orders for him? A. Given to the dealer?

Q. Yes. To the operator. A. The dealer understands it.

Q. How does it understand that? A. Through practice.

Q. Is he ever told? A. Yes.

Q. By whom? A. The salesman.

(2476) Q. The salesman tells the dealer that he will write up or solicit orders for any type of TBA, regardless of the source of supply? Is that correct? A. He doesn't

solicit orders for companies other than Firestone and Goodrich. He will, though, perform a service for the dealer in transmitting.

Q. But he only solicits for Goodrich and Firestone, is that correct? A. He will do anything the dealer asks him to do, regardless of the brand handled.

Q. The question is will he solicit orders? You indicated earlier that he might not solicit orders for anything other than Goodrich or Firestone brands. The question now is will he solicit orders for unsponsored brands?

* * *

(2477) A. The salesman does not customarily solicit that type of order. However, he will cooperate with the dealer in transmitting an order wherever the dealer wants it sent.

By Mr. Dias:

Q. You mentioned when the rubber companies get careless the salesmen use their influence with the rubber companies, or whatever influence they have. A. Yes.

Q. In what respect do you mean? A. I probably used the improper word when I said influence. I probably should have said association or knowledge of, or acquaintance with.

Q. In connection with what rubber companies? A. With Goodrich principally, and Firestone.

Q. You mentioned the circle service and how it occurs that the salesman can detect his first possible tire sale. A. The dealer.

Q. In connection with that, do you have any idea of the percentage of sales of passenger car tires in stations as compared with truck, tractor and so on? A. My statement on that would be of little value to you. It would be a guess.

Q. Do you have any idea of the volume of tire business done through station outlets, overall tire business done through station outlets? (2478) A. I think the rubber people and their own statistics could give you an answer to that.

Q. You testified that the vast majority of your stations buy non-sponsored products. Can you clarify that a bit? Do you mean that they buy exclusively non-sponsored products, or some non-sponsored products? A. The vast majority of our stations buy some non-sponsored products. I might add, also that a great many of our stations buy no sponsored products.

Q. Isn't it true also that of the non-sponsored products, the greatest percentage is in the accessories field rather than tires or batteries? A. I think that's right.

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(2480) Thereupon,

MAURICE A. WOLFE was recalled as a witness for the Commission and, previously having been duly sworn, was further examined and testified as follows:

Redirect examination by Mr. Dias:

Q. It is our information, Mr. Wolfe, that at one time during the history of this TBA program, stations or outlets were assigned area-wise to either Goodrich or Firestone. Can you give us some information on that?

Mr. Royall: Your Honor, we object to that, unless it is within the period in which this case is being tried. I don't know what relevancy it has.

Mr. Dias: I was first trying to find out if that is so. And then if it was, when it was discontinued and why? I frankly have no further information on it.

Mr. Royall: I will make my objection, and if your Honor overrules it at this time and it appears it was before 1951, we will move to strike the answer.

Hearing Examiner Kolb: The objection will be overruled.

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(2481) A. Stations or dealers, as such, were never assigned.

By Mr. Dias:

Q. Let's use a different word. Were they nominated, areawise, city-wise, some territorial or divisional nomination? Is that correct? A. There was a time when we worked primarily with one company; secondarily with the other.

Q. When was that? A. 1940 to about 1948 or '50.

Q. '48 or '50, you say? A. Yes. I don't know the exact date. It was not later than 1950, and it could have been as late as 1948.

Q. Will you explain how that worked, Mr. Wolfe?

(2482) A. Well, as I said, we worked primarily—

Mr. Royall: Your Honor, I want to move to strike that testimony, and any further testimony.

Hearing Examiner Kolb: The motion will be denied.

A. Back in those days the territory where we worked primarily with B. F. Goodrich, they had their supply points set up and their distribution in that—

Mr. Royall: Your Honor, we have a continuing objection to this.

Hearing Examiner Kolb: You have a continuing objection.

Maurice A. Wolfe, Recalled, for Commission—Redirect

By Mr. Dias:

Q. Will you proceed? A. (continuing) —whereby we felt that probably they did a better job than maybe another supplier would there. Therefore, that being so we would work with them.

Q. With whom? A. With B. F. Goodrich Company in that given area unless the dealer said of his choice that he didn't want B. F. Goodrich. Then we would work with the other.

Q. How does that tie into the proposition that they were assigned or nominated by areas? Was it city-wide, state-wide, section of the country, or how did that work? A. Well—

Mr. Royall: Your Honor, I object to the question (2483) because he didn't say they were nominated by areas. He said it was a priority or preference given.

Hearing Examiner Kolb: Objection overruled.

A. In a division, in other words one of our divisions, maybe we would primarily work, or it could be a state area.

By Mr. Dias:

Q. When you talk about divisions you are referring to Texas division rather than the rubber company division? A. Texas Company division.

Q. And it could work out by a division or state area? A. Yes.

Q. Other than that, was the procedure in regard to the program the same? A. Yes.

Q. Commissions and type of merchandise and that sort of thing? A. Yes.

M. A. Wolfe, Recalled, for Commission—Redirect, Recross

Q. What type of outlets were involved in that? Were they all the outlets? A. All accounts.

Q. All Texaco accounts. Was this accomplished throughout the country or was this limited to East Coast or any particular place? In other words, when you say it was done by divisions, by divisions nationwide or a particular area of the country? A. It was nationwide.

(2484) Q. Nationwide? A. I would like to add this: I think at the beginning of this, in 1940, our sales personnel weren't fully familiar with TBA merchandising and by working primarily with one company as against another we were better able to educate our own people fast in carrying on the services from there on out.

Q. How did you educate yourselves? A. First of all the Texas Company sent a group of men to Akron where they spent time in going through the tire company sales training class. Then they go back and through those men try to carry that training into the field, through our own personnel into the field. That was the beginning of our activities in the TBA program.

Q. You mentioned a group of your men. What type personnel were they? A. They were the representatives, TBA promotion, from each division.

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(2485) *Recross examination by Mr. Royall:*

Q. Regardless of that fact, since 1950 has that system been in effect at all? A. No, sir.

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George H. Glenn, for Commission—Direct

(2486) GEORGE H. GLENN was called as a witness for the Commission, and, first having been duly sworn, was examined and testified as follows:

(2493) *Direct examination by Mr. Dias:*

* * *

Q. Mr. Glenn, I would like you to take a look at Commission Exhibit 94-A and B.

Will you please state for the record your full name and position in the Texas Company? A. My name is George H. Glenn, and my position is manager of the marketing research division.

Q. Will you state the scope of your duties in that position? A. In that position my duties consist of directing and supervising those activities having to do with marketing research, sales analysis, and sales and budget forecasting.

Q. How long have you been in that position, Mr. Glenn? A. Since May 1, 1955.

* * *

(2494) Q. Among your duties in your current position are you responsible for the compilation of statistics? A. Yes, sir. Might I restrict that answer to statistics in the sales department?

Q. Would that include TBA? A. It may. I would like to qualify that answer in this way: Since I have been on the job, May 1, 1955, other than (2495) the development of statistics having to do with information we are furnishing here, I have had no concern with statistics for TBA.

Q. Other than those that you are now furnishing here, is that right? A. Yes.

* * *

(2502) Mr. Dias:

* * *

George H. Glenn, for Commission—Direct

(2503) I would like to have marked for identification as Commission's Exhibit 116 a tabulation showing by divisions, the number of dealers, consignees, and distributors located in each during the years 1952 through June, 1956, and the number of each handling Goodrich TBA products.

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By Mr. Dias:

Q. Mr. Glenn, was this tabulation prepared by you or under your direction? A. Yes, sir.

Q. In order to clarify this, will you explain how this tabulation is set up? A. The title of the form is "Total Texas dealers, consignees, and distributors by divisions, and number purchasing Goodrich TBA."

In the left-hand column all of the 15 divisions listed, and a line left for each of the years 1952 through 1956, including the half of '56.

There is then a group of a dozen columns over which is (2504) carried the title Texas Company dealers.

The first of those columns is entitled "Total Texas Company Dealers." That total is inserted for each division for each of the years for which the information is available and marked "NA" in those instances where it is not available.

The next column is headed "C and D dealers." Here again for each division it shows the number of C and D dealers combined for each of the years, and where not available, so stated.

The next group of eight columns, I believe, sub-headed "Number purchasing Goodrich," first has a column entitled "Tires and tubes"; secondly "Batteries and auto supplies"; and third, "Batteries"; fourth, "Accessories and other merchandise."

In each one of those columns is indicated the number of Texaco dealers buying Goodrich merchandise for which Goodrich pays us a commission, divided between the four categories. Except in the case of batteries and accessories and other merchandise for the years 1952, 53, and 54 they were not separated, but rather consolidated.

The next group of columns, comprising ten, carries a master heading of "Consignees" and a sub-heading of "Number purchasing Goodrich."

The first pair of columns is used to indicate the total number of Texaco consignees by divisions and for the individual periods for which the information is available.

(2505) The second pair of columns is used to indicate the number of consignees purchasing Goodrich tires and tubes. The third pair to indicate the number of those purchasing batteries and auto supplies. And the last two pairs to indicate the number of those purchasing batteries and accessories and other merchandise for those periods which are the year 1955 and the first six months of 1956 when information was available on that breakdown.

The last section to the right of the form, again carrying a total of ten columns, carries a master heading of "Distributors" and a sub-heading of "Number purchasing Goodrich".

The first pair of columns here again tells by divisions and by each of the periods indicated the number of distributors that the Texas Company has.

Secondly, the number purchasing Goodrich tires and tubes.

Third, the number purchasing Goodrich batteries and auto supplies.

Fourth and fifth, and for 1955 and 1956, the only years for which it is available, those buying separately batteries and accessories and other merchandise.

I believe I have explained the exception of these additional items. First, that it carries a summary, which represents a total of all that I have described for 1952, '53, '54, '55, and the first six months of 1956, and the fact that the figures are taken from December reports, except for the year 1956, which is taken from June reports.

(2506) Q. Are you finished? A. I believe so; yes, sir.

Q. In order to help us with this, will you refer to the lefthand side under "Boston", 1954. You have total Texaco dealers, 2,318. A. Yes, sir.

Q. Then under "C" and "D" dealers, 1,980. Does that indicate that there are 2300-plus dealers, and of the 2300-plus 1,980 are the "C" and "D" dealers? Is that correct? A. That is correct.

Q. What type dealers would the remainder be? A. Those not contracted to the Texas Company or not in the contract to the Texas Company.

Q. Would they be customers of consignees? A. They might be customers served directly by the Texas Company salary bulk plan; they might be customers in consignee areas, and they would predominantly be customers in distributor areas.

Q. When you show figures under the breakdown of tires and tubes, batteries and auto supplies and accessories, by adding those three columns you then get the picture as to the number of "C" and "D" dealers who bought during that year. Is that correct? By subtracting the total of those three columns from the total shown under "C" and "D" dealers? A. No, sir. I think I know what you mean and it is not right.

(2507) Q. There are some numbers left over and I want to determine what that amounts to. A. Would you repeat your question?

Q. Referring to the year 1954, under the column "Texaco Total Dealers" there appears the figure 2,318.

Mr. Royall: What are you referring to?
Mr. Dias: Boston.

By Mr. Dias:

Q. Under "C" and "D" there appears the figure 1,980. Explain, please, the difference between the total number of Texas dealers and "C" and "D" dealers. Or put it this way: Is it the explanation that you have given us? A. So far as I am concerned, it is the explanation I have given you.

Q. Under the heading "Tires and Tubes" there appears the figure 154, and under "Batteries and Auto Supplies" the figure 86. My question is, by adding the figures 154 and 86 do we get the total number of "C" and "D" dealers who bought TBA products in that particular division during that particular year? A. You have asked several questions there, Mr. Dias, to which I can't give you one answer, to be very honest with you. I will try to answer them.

Q. I don't want you to be confused. A. I am not confused but I would rather answer them in parts.

(2508) Q. All right. A. No. 1, you cannot add the number under "Tires and Tubes" and the number under "Batteries and Auto Supplies" and get a true number of the total who are buying TBA, because each dealer is qualified under each category that he bought under. So there were 154 bought tires and tubes, and maybe the 86 who bought batteries and auto supplies are that same part of the 154 or they may not be. They may be entirely different dealers.

The second part of your question is answered by my explanation previously that the figures shown are as of the month of December.

Q. That is the month of December only? A. Yes, sir.

Q. In other words, this isn't a report for the entire year? A. No, sir.

Mr. Dias, may I make this qualification, too, as to the period. In 1952, as I remember, that figure that we would take for the month of December would represent those accounts who bought in December, November, and October.

In 1953—frankly, I have this all explained on your next statement, and I am trying to remember it—for a later period, let me put it that way—I don't want to be specific as to date—for the next period the number represents the dealers who bought within a quarter, or within 90 days.

And for 1955 and 1956 it represents the dealers (2509) that bought in a given month for which the count was made, or in this case the month of December.

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(2510) *By Mr. Dias:*

Q. I ask you, Mr. Glenn, is this identical in all respects to the preparation and interpretation as you gave us in connection with 116? It is prepared the same way, is it? And we read the columns in the same fashion?

Your explanation of 116 applies to 117 too, does it not, with the exception that one deals with Firestone and the other with Goodrich? A. Yes, sir; it does.

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(2511) Mr. Dias: I would like to have marked for identification as Commission Exhibit 118 a tabulation showing total (2512) number of Texaco dealers in the United States, with a breakdown as to "C" and "D" classification for the years 1952 through June 1956, and the number of each purchasing Goodrich TBA products.

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By Mr. Dias:

Q. Mr. Glenn, will you state whether or not this tabulation was prepared by you or under your direction? A. Under my direction.

Q. Will you explain the tabulation, please? A. Here we have a statement entitled "Statement showing total TT Company dealers", which means the Texas Company dealers in the United States, and the number of "C" and "D" dealers purchasing Goodrich products.

As contrasted to the previous statement this is (2513) not by divisions but this is a summary for the country as a whole.

In the left-hand side we have a column headed with the word "Year", subcaptioned indicating each year 1952 through 1956, and further subcaptioned indicating each month of the year excepting 1956, where it indicates just the first six months.

The next pair of columns is entitled "Total TT Co. Dealers" which again means the Texas Company dealers. It shows for each of the months during the period covered, for which the information is available, the number of Texas Company dealers.

The next pair of columns is entitled "C Dealers" and it shows for each of the months of the period covered the number of the Texas Company dealers that are classified as "C" dealers.

The next pair of columns is entitled "D Dealers" and for those months for which the information is available it shows the number of the Texas Company dealers which are classified as "D" dealers.

The next column is headed "Total C and D Dealers" and represents the total of the first and second columns, C and D dealers, when there is a figure in each of those columns.

The next section carries a master heading of (2514) "Number Purchasing Goodrich" and is divided into four subsections. The first is three columns headed "Tires and Tubes", with a subheading "C, D, and Total".

For each of the months covered there is a figure indicated under column "C" and column "D" and "Total" of the two representing the number of "C" or "D" dealers who in each of those months bought a dollar's worth or more of Goodrich tires and tubes on which Goodrich paid the Texas Company a commission.

The next three columns entitled "Batteries and Auto supplies" again broken down into subheadings of "C, D, and Total" indicate for each month of the period covered the number of dealers in each of the months who bought one dollar's worth or more of batteries and auto supplies from Goodrich on which Goodrich paid the Texas Company a commission.

The next group of three columns is headed "Batteries" and subheadings "C, D, and Total."

The next group of three columns is headed "Accessories and other Merchandise" and "C, D, and Total". However, we note that data for these two groups of columns was not reported separately during the years 1952 through 1954, so it is therefore only recorded separately for the years 1955 and the first six months of 1956.

The statement carries the further data in the form of a memorandum. The number of dealers purchasing TBA in each (2515) category arrived at is as follows: Year 1952 to May 1953, inclusive, the monthly count indicated is based on the number purchasing $1 or more during a three-month period ending with the current month.

Next, for the period June 1953 through December 1954, inclusive, quarterly count based on the number purchasing $1 or more during three-month's period ending with June, September, December, and March.

Next, that for the period January 1955 to June 30, 1956, inclusive, monthly count based on number purchasing $1 or more during each month.

A further note reading "Grand Total dealers purchasing all TBA items combined is not possible as dealers who purchase in two or more categories are duplicated for each category in which they purchase."

Finally, the designation "NA" appears on the report in a number of cases and is explained as meaning "Not available."

Q. Mr. Glenn, would you mind explaining for the record the method by which we can use document 118, in view of the fact that Commission Exhibit 116, and Commission Exhibit 117 for identification, were compiled during the month of December, or taken from figures shown during the month of December? Will you explain how we can use this chart, 118, to transpose figures and get similar information for 116 and 117? (2516) A. Frankly, I am a little bit at a loss to understand what information you want to get.

For example, on Exhibit 116, on the bottom, a section of the summary of all divisions, the figures as to the total Texas Company dealers for 1952 reads 39,045 and is the same figure that we find for December on Exhibit 118.

And then following next in 1953 we find 37,385, and that is the same on 118.

Then getting into the category of "C" and "D" dealers we find a figure on 118 of 11,858, in 1952, and we find that in the Exhibit 116 our figure is a combined one. I would like to offer an explanation as to the combination.

On Exhibit 118 you will note that for each of the months except December, during 1952 through 1956, we don't have available a number of "B" dealers. We don't count them. So that when we get over to this statement

here it was necessary to combine it. This count of dealers is made twice a year.

Q. Will you explain that exhibit a little further? A. There is an additional point of information. For the purpose of using the two reports together it is possible to use from Exhibit 116 the information shown in the summary in application to the columns with which you may be concerned and as are covered in the same manner in both reports, the individual monthly figures as shown on Exhibit 118.

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(2517) *By Mr. Dias:*

Q. Mr. Glenn, is Commission Exhibit for identification 119 similar in method of preparation and interpretation—is it similar to Commission Exhibit 118? A. Yes, sir.

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(2521) *Cross-examination by Mr. Royall:*

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(2523) Q. There was introduced Exhibit 114-A through D showing the annual TBA purchases and the commissions paid by Goodrich to Texas for the years 1952 through June, 1956, and that showed for the year 1952 a total commission for all divisions of how much? A. $1,090,583.

Q. Is that correct? A. That is what it says there.

Q. Is that a gross figure on commissions? A. Yes, a gross figure.

Q. It makes no deduction for expenditures and costs in connection with the plan, does it? A. No, sir.

Q. Are you familiar with the computation made in 1952 as to the commissions on all TBA plans during that year, the expenses incurred, and the net left after expenses? A. In total?

Q. In total, yes. A. In total, yes.

Mr. Dias: I object. We are going beyond the scope of the direct.

(2524) Mr. Royall: No, sir. I am going to show what that means.

Hearing Examiner Kolb: Are you going to refer to another exhibit?

Mr. Royall: One which he introduced and related to this.

Hearing Examiner Kolb: I will overrule the objection.

By Mr. Royall:

Q. Have you an opinion based on the investigations that have been made as to approximately what proportion of the gross commissions received from TBA is consumed by expenses and costs? A. Yes, sir. The figure runs around 70 percent or thereabouts.

Q. Seventy percent of what? Of costs? A. Of costs, yes sir.

Q. And expenses. Leaving approximately 30 percent of the gross commissions as earnings? A. Correct.

* * *

(2530) *By Mr. Royall:*

Q. From the other side of this picture I hand you Commission Exhibit 118. I think I have already asked you if the number of "C" stations have increased? A. Yes, sir.

Q. You say that the number of "C" stations purchasing Goodrich are arrived at on the basis of whether they purchased in some years only $1 a month or more, and in some years only $1.25? A. Any time a number appears it is based on $1 or more.

Q. There is nothing on this chart to indicate that any of those stations did not purchase amounts or nothing on there to indicate that they did not purchase large amounts of other products, is there? A. No, sir.

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JOSEPH A. HOBAN was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

(2558) *Direct examination by Mr. Boyd:*

Q. Mr. Hoban, will you give us your full name please? A. Joseph A. Hoban.

Q. With what company are you connected? A. I am Vice President of marketing for the B. F. Goodrich Company.

Q. Where is your office located? A. My office is located in Akron, Ohio.

Q. How long have you been with the B. F. Goodrich Company? A. Thirty-four years.

Q. How long have you held your present position? A. I was elected to my present position in June of this year—1956.

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(2259) Q. Yes. A. My present position is a corporate-wide position where I am a marketing advisor to all divisions of our company on any of their sales and marketing problems. I have no direct line authority in my present position. I am a staff marketing Vice President.

Q. And this is since June of this year? A. Yes, sir.

Q. What about prior to that time in the position that you held before June? A. For the period 1953, June, to 1956, I was Vice President in charge of replacement tire sales.

Q. In that position what were your duties and responsibilities? A. Complete authority on all matters pertaining to policy and programs, prices, advertising, selling. Complete charge of the (2560) replacement tire division of our company.

Q. Then with respect to the TBA program will you describe your duties in that respect? A. I had all the contacts with the home office of the Texas Company that were involved in the discussion here, and I was responsible for the assistance in developing the programs which are used and in the approval of any and all programs of promotion and selling effort and distribution. Every phase of the TBA program came under my personal direction.

* * *

Q. Mr. Hoban, could you tell us briefly the line of products which are manufactured by the B. F. Goodrich Company? A. Well, I wouldn't be so bold as to be able to name them.

Q. General category. A. Our company is a widely diversified company, as you gentlemen know. We are engaged in the manufacture of tires and (2561) tubes of all types, kinds, and descriptions, for passenger cars, for trucks, for farm vehicles, for industrial vehicles, for airplanes, for vehicles that operate in the mines. Every type and kind of transportation, B. F. Goodrich builds a tire for that particular type.

In addition to the tire end of our business, we are widely diversified. I don't know whether you wish me to go into that or not. We manufacture an entire line of industrial products. We have an industrial products division, hose, belting, packing, all the things of that nature.

We have a footwear and flooring division that manufactures flooring. In addition to that footwear of various types and kinds, sport footwear for good old snow storms

and rain, that some of you anticipated yesterday and didn't happen. In addition to that we have a chemical division involved in the production of many various products in the chemical field.

We have an aviation division, or company, involved in the manufacture and selling of aviation products other than tires, and tires they sell, too.

I think that covers most of them. I don't know that I missed any. It is a very widely diversified company.

Q. The company does purchase and resell some products, isn't that true? A. Yes, sir.

Q. Will you tell us the category of products of that nature (2562) that they buy and resell? A. Well, if you are interested largely in discussing TBA, I can answer that pretty easily for you.

We purchase batteries that are sold through our dealer outlets across the country. We purchase a large number of smaller auto supply items. We have spark plugs, we have oil filters. It would be much easier for me to give you a list of all the things because I don't offhand remember them. But a complete auto supply line that we make available to all of our dealers as part of our B. F. Goodrich franchise.

Q. Then with respect to these TBA items that you buy and resell through your outlet, are any of them sold under the brand names of the B. F. Goodrich Company, and if so, which ones and what are the brand names? A. Our battery is sold under the B. F. Goodrich brand name. The other items that I mentioned like spark plugs and filters are sold under the national brand that we carry.

Q. That you carry? A. That we stock and sell. Do you wish me to mention the name to you?

Q. No. A. Spark plugs, we do not have it under our own brand. We have a national brand. Champion, if you wish to know the name of it. We sell Champion spark plugs.

Q. Of the TBA items that you resell, are batteries the only (2563) one of the items on which you have your own brand name? A. I don't know whether you would call it a brand name on the fan belts. It is on there. Manufactued by B. F. Goodrich. Would you consider that? Any of our rubber products might have it. Some of our radiator hose is branded, some isn't. But we are inclined to national branded products of other than our own manufacture, if that is what you are trying to get at.

(2564) Q. Just to get me clear on this point: You do not sell any other TBA items besides batteries under any brand name other than B. F. Goodrich Company's name, do you? A. No, sir. We sell only our own brand of batteries.

Q. Then none of the other TBA items are sold under any other brand name owned by Goodrich. That is what I am trying to get to. Is that right? You sell them under the names of the manufacturer from whom you purchased them? A. Yes, sir. The name of the manufacturer from whom we purchased them, like Fram filters and Champion spark plugs, as two examples.

Q. And you sell to all company outlets, B. F. Goodrich Company does. Is that right? A. B. F. Goodrich Company sells to dealers across the country, not only service station dealers, as we speak of them, we sell to tire dealers, car agents, service station operators. A wide variety of types of people sell tires, you know, and we move into every channel of trade where tires are sold.

Q. That is what I was coming to. I wanted you to describe the other types of outlets that you sell to besides oil company outlets. A. We don't speak of them as oil company outlets because—

Q. How do you speak of them? A. We speak of them as service stations. Some of them are owned entirely by the man who is operating, and all he does (2565) is pur-

chase his petroleum products from some petroleum company. So we call them service stations. We make no distinction, you know, when we are selling a Texas dealer over and above selling a Shell dealer as far as the B. F. Goodrich franchise is concerned. When we move in we move in to the dealer with our regular program.

It is no different when we are selling a Texas Company dealer as it would be if we were fortunate enough to snare a Sinclair or a Shell dealer, which we have in many cases.

Q. In that connection, you do sell, though, do you not, to say distributors and consignees of the oil company. I want to make sure that you sell to outlets of the oil company other than at the retail level. That is true, isn't it? A. Oh, yes, sir. We sell to a classification known as consignees who in turn sell to their own outlets or possibly to other outlets designated for them to serve.

Distributors, too, of the Texas Company.

Q. Mr. Hoban, will you tell us the outlets, the company-owned outlets that the B. F. Goodrich Company sells its products through? A. I don't know that I understand your question. What do you wish me to tell you? Are you referring now to our company-owned stores?

Q. Yes, and any other company-owned outlets that you sell your products through, besides stores. Are there any others? (2566) A. You will have to elaborate on that a little for me. I don't know that I understand your question.

Q. I am trying to get some idea of the numerous outlets through which B. F. Goodrich products are sold, which outlets are owned by the company. A. You are speaking of B. F. Goodrich tires now? You are talking about B. F. Goodrich tires?

Q. B. F. Goodrich TBA; yes, sir. A. We have a number of company-owned, completely-owned stores, through which we sell our tires and our complete line of products.

It includes many things that the ordinary service station would not purchase and it would have no place to be in that business. Certain types of our stores are more like department stores than they are service stations. So we sell a much wider variety of merchandise in our own company-owned stores.

Q. Right at that point, at those company-owned stores, do they sell at retail or just— A. Our stores are in business primarily to do a retail business, and wholesaling is but very minor; in some cases non-existent altogether and in other cases they serve as emergency points for our dealers.

Q. When you speak of dealers in that sense you don't mean company-owned dealers. You mean dealers otherwise that you sell to, independent dealers? (2567) A. Yes. Dealers of all types and kinds. A store might have a tire that a dealer who has a connection with, or has no connection with at all, an oil company, might have a sale for. And we use the store as a supplemental service when ever that emergency arises. But our store is predominantly and primarily in the retail business. The little service they render is emergency pickup service for the dealer trade generally.

Q. Is there any other type of company-owned selling outlet in the Goodrich Company besides the B. F. Goodrich stores? A. None that I know of, sir.

Mr. Barton: Are you referring to retail?

Mr. Boyd: I was including other than retail.

Mr. Barton: You mean distribution?

Mr. Boyd: Yes.

Mr. Barton: Branch operation?

Mr. Boyd: Yes, company-owned.

The Witness: Oh, thank you for having me get a better understanding of your question.

You are talking now about our wholesale districts?

For instance, you can start right off, if you want to get a picture of our company, if that is what you are after, we have five tire manufacturing plants. They are located in Akron, Ohio; in Oaks, Pennsylvania; in Tuscaloosa, Alabama; in Miami, Oklahoma; and in Los Angeles, California.

(2568) Tires are manufactured in all of those plants. Shipments are made from those points principally—not entirely but principally—to what we speak of as merchandising warehouses, and we have some fifteen merchandising warehouses. In addition to the merchandising warehouses, tires are shipped from factories or from the merchandising warehouse to some 31 districts around the country.

From those factories or merchandise warehouses or districts tires are shipped to our stores and to our dealers. In addition to that, dealers are served from a few warehouses, so-called, company-owned, and emergency pickup service is rendered to dealers from some of our stores.

Does that give you a picture of our distribution?

By Mr. Boyd:

Q. Yes, sir.

In some of these documents I believe, that are in evidence, the term "BFGS" is used. What is that? A. B. F. Goodrich store.

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(2570) *By Mr. Boyd:*

Q. In your description a moment ago of the channels through which the tires manufactured by the company move, you listed merchandise warehouses and there were 15 of them. Do they sell or distribute only to the 31 districts? A. No, sir. I explained to you that the merchandise warehouse would ship to stores, to dealers, to districts, and possibly to the few warehouses that we have over and above the districts that I mentioned.

Q. Then the 31 districts, would those be district warehouses? A. Those are district warehouses and usually offices, district sales offices and warehouses. They ship to dealers, to stores.

Q. What about independent wholesalers, jobbers of B. F. Goodrich line? Where do they fit into the picture? Do you sell through independent jobbers and wholesalers? A. Yes. We have a regular wholesaling tire franchise and the wholesaler would be set up in an area. It might be part of a big city, it might be an entire county. It might be several counties. It depends upon car registration in the area.

And he would actually sell and deliver our tires to dealers in that area. That is a method of servicing smaller dealers.

Q. Would these independently owned wholesalers and distributors sell to oil company outlets? (2571) A. Service station outlets? Indeed they do.

Q. That are under the commission plan? A. Yes, sir, both under the commission plan and not under. They serve small dealers and service station dealers falling in that general classification.

Q. Mr. Hoban, I hand you a document which has been marked as Commission Exhibit 128-A through F, which is entitled "B. F. Goodrich Tire Dealer Franchise."

I believe Commission's Exhibit 128-E and F says "associate agreement." Which one of those two, if both of them, are used with oil company outlets? A. You and I speak of the same things under different names. Service station outlets, I speak of them, and both of these contracts are used with what you call oil company outlets and what I call service station outlets.

If we are serving the account directly, from one of these districts that I spoke to you about, as an example—

Q. A company-owned— A. A district.

Q. (continuing)—outlet? A. I don't speak of our districts as being company-owned because the building might be owned by John Doakes. It isn't like a company owned property of any kind. It is a place where we pay rent in most cases and store our products and have the offices for the area and have that company operated, if you (2572) would speak of it that way, that company-operated district, if we are soliciting the business and servicing it from that point, this is the regular dealer or direct dealer franchise.

Q. In other words, Commission Exhibit 128-A through D are the franchise agreement, tire dealer? A. That is right. If one of these wholesalers that you spoke about.

Q. Independent wholesalers? A. Independent wholesaler. If he was supplying and servicing, he would have this associate dealer franchise sign, and this record would come in to us.

Mr. Boyd: That is Commission Exhibit 128-E and F.

By Mr. Boyd:

Q. And independent wholesaler would have a franchise agreement? A. He would sign the one that is signed by all direct accounts, that one that you have in your hand.

Q. Commission Exhibit 128-A through D.

Joseph A. Hoban, for Commission—Direct

Mr. Hoban, I want some information about the sales department, that is, the selling end of the B. F. Goodrich business as it relates to the TBA program. Will you describe that for us from the top down to the ultimate sale through the service station outlet? A. I don't know how detailed you wish me to go. But in my immediately previous position of vice president of the tire (2573) division I handled the so-called home office contacts with the Texas Company. Moving from that particular operation we have under the tire division vice president a general manager of sales.

Under the general manager of sales we have 31 district managers. Under those district managers we have wholesale supervisors, truck and bus tire supervisors, farm tire supervisors, and in many districts petroleum representatives.

Under the various classifications district managers direct or wholesale supervisor in most cases, we have what we call territorial managers. They are called wholesale salesmen.

Q. How many would there be? A. As of right now?

Q. Yes. A. The most recent time I can remember?

Q. Yes. A. Close to 400.

Q. You mentioned petroleum company representative, I believe you have it as coming under the category of district managers. How many are there? A. Petroleum company representatives?

Q. Yes. A. As of today?

Q. Yes. A. We have under the merchandising manager, as we have (2574) again resorted to calling him in Akron, we have a petroleum sales manager.

Q. Excuse me, if I may interrupt you. You said merchandise manager. Is that his correct title? A. It is again. You are asking me as of today. Under the tire division vice president today we have a merchandise manager. The

merchandise manager has under him certain departments, one of which is the petroleum sales department. The manager of petroleum sales reports to him.

We have in that department a certain staff. I would guess, out of Akron, on field men, we might have four and then stationed in the field in zones we might have maybe as many as ten. And in districts, depending upon the volume of petroleum business being done in the district, we might have on an average maybe one in the district.

Does that give you the general idea that you are after?

Q. I believe so. A. You see in our business we serve the petroleum accounts that you are speaking of here in the same manner with our organization that we serve a regular dealer—our territorial managers make the franchise presentation, they sell the goods, our supervisors assist. We handle them just the same as they are. They are one of our dealers, just the same as if they had no connection in any way. I will explain the difference later on. But as far as our selling is concerned, our entire (2575) field organization works right with the dealers. There is no distinction at all. They get full credit for them whether they are an oil company account or a contractual account of ours or not. It makes no difference.

(2576) Q. Then am I to understand from what you just said that the salesmen of the B. F. Goodrich Company, outside of the petroleum company representative's jurisdiction, also sell to oil companies or service station outlets? Is that right? A. The salesmen?

Q. Yes. A. The territorial manager?

Q. Yes. A. The territorial manager is the man who does the real selling. He is the fellow who sells the dealers. He makes the presentation, he solicits the account, and he is the fellow that is primarily responsible for the dealer outlet. It is his in his given little area. He is kind of like a little king, that territorial manager. That is

why we designate him with the term territorial manager. He is really a boss-man in his area. He is responsible for the complete establishing of new accounts and the promotion of business and everything else.

He gets assistance, if you wish me to go into that. He is the man who does the selling.

Q. In other words, he is the direct contact man. There is no other salesman under him that would be doing the selling? A. No, sir. There are others under him that deliver merchandise, but you don't want to go into that I suppose.

Q. No, sir. A. Like supply points.

(2577) Q. On these territorial managers— A. We call them territory managers.

Q. On these territory managers, just how are they compensated for their sales activities? A. All of the territory managers operate on a fixed salary on bonus. And of course their traveling expenses are compensated for. So they operate on salary and expenses, plus an annual bonus.

Q. Is the annual bonus tied to their amount of sales they do with the service station outlets? A. Not as far as any identification of a service station outlet. They have a quota and their quota is established on the car registration and the potential in the particular territory assigned to them. Whether they get some portion of that through service station dealers or none, that varies very widely. It is a question of getting it from dealers, whether they happen to be service stations or whether they happen to be garages, or specialized tire outlets or car agents, whatever they may be. It is tire dealers. They have a definite quota that is given to them, and the attainment of quota is one of the factors in our bonus plan. Not the only factor, but one of them.

Q. One of the items you mentioned is potential in the territory assigned. Does that include the outlets of the Texas Company, say, that are in that area? A. We would have no calculation of any Texas Company. The (2578) way we arrive at quotas, Mr. Boyd, there is a certain car registration in a given area. We draw a circle around this area. There are so many cars, so many trucks, there are so many farm vehicles, so many industrial vehicles in this territory manager's assigned territory. That constitutes a certain definite potential of rubber business. We know what it is for the industry. We know what we would like to get for ourselves. And the difference between what exists and what we would like to get for ourselves and what that quota is, Mr. Boyd, is the common sense that you have to use in arriving, with the experience you have, at the handling of quotas for salesmen.

Q. Still in that connection, is it one of the factors, though, of the number of Texas outlets that would be part of his potential within his territory? Isn't that taken into consideration, in setting his quota? A. No. The number of dealer outlets in his territory is not the guide. The guide is the number of cars which establish a potential for the industry.

In some areas you deal with large dealers. Thereby you get your potential of the industry availability through a small number of accounts. In some other area you might deal through a large number of accounts. We deal strictly and entirely on the basis of the potential that is available in the area. Whether a salesman elects to get it from a smaller number of accounts or larger, or whether he gets it due to the availability (2579) of a lot of small dealers because he can't secure and there doesn't exist a large dealer, that is his problem. That is why he is a territorial manager.

Q. Could you give us some idea of how often these territorial managers call on the oil company outlets or Texas outlets in this instance, in his territory? A. You can't set up any exact basis of calling on Texaco outlets. You would have to go into a certain section of the country and you would have to find out what the salesman's territory is, and exactly how many active accounts he has and what the routing that is established for him by his district manager and the supervisor and himself, just how frequently that enables him to contact. If you want me to give some general ideas I will be glad to. But you have to be specific when you are routing salesmen. You can't route salesmen on just any broad general idea. You have to get right down to cases. If you work in North Dakota the problem is entirely different than in the City of Washington. It is just an entirely different problem of dealing with them. So you have to get right down to cases.

Q. His immediate territory manager or salesman, who directs and routes him, who does he report to? A. He reports, generally speaking, to the district manager. In some cases, however, the district manager has a wholesale supervisor and he designates in some cases the actual reporting (2580) of territory managers, some number of them in his district, directly to that supervisor. So we might have 15 salesmen in a given district and the district manager might have reporting directly to him eight, and to the wholesale supervisor seven. But in our organization thinking the territory managers report to district managers. Actually, in many cases some of them report to the wholesale supervisor, who in turn reports to the district manager.

Q. And there are 31 district managers? A. Yes, sir.

Q. From that point it goes on up to the general sales manager? A. The district manager? No, sir. The district manager reports to the zone manager. We have five

zone managers. The zone manager reports to the general manager of sales at the home office, the five zone managers.

Q. As I understand that, the general manager is directly under the vice president, tire replacement? A. Yes, sir.

Q. Mr. Hoban, could you tell us as to the line of tires sold to the service station outlets by the B. F. Goodrich Company? By that I mean the categories quality-wise and price-wise. Are they, say, three different qualities in price lines? A. That is quite a complicated subject indeed. The B. F. Goodrich brand tires start with what is spoken of in the trade as premium tires. It is our Lifesaver Silvertown tire. I (2581) may have to go back to explain to you the premium tire.

Q. Just price-wise we are interested in, the five categories. A. Then you move from that particular tire down to the so-called hundred level, as we speak of it in the industry, which is the quality of all original equipment tires, our own original equipment tires. From that point we drop down to a tire that is spoken of as an 80-level tire. That would be so-called second-line tires that we speak of. From there we drop down to a third line of tire that would be about a 70, or 75, level tire.

Those tires are made in various types of materials. If you go up to the premium tire, the No. 1 that I gave you, the Lifesaver tire, it is made in nylon car case, and it is made in rayon. It is made in all black, and it is made in black and white, And of course it is made in many sizes. Do you wish me to enumerate some of those?

Q. No. A. Then you move down to the hundred-level tire and it is made in nylon, and made in rayon. I might go back and say to you that the Lifesaver tire is made in tubeless construction only.

We move down to the hundred-level tire and we have that in nylon, rayon, black, and in white. In addition to

that, we have that in tubeless construction, and we have that in tube-type tire.

Then you move down to the second line tire, and we have that in black and in white, made only in rayon. (2582) You drop down to the third-line tire, and we have that in black and in white, only in rayon.

Q. Are all of these categories of tires sold by B. F. Goodrich to oil company outlets? A. Yes, I would say all of them are sold. Not necessarily every one of those tires in every station, as that would not be suitable in some cases for a man to stock every one of those particular tires. But across the country all of those tires are sold through some service station outlets.

The percentage breakdown varies depending upon the dealers, the location, and the area which he serves, and many other things that go to merchandising tires.

Q. Now as to the batteries that are sold to oil company outlets, are they of one quality only or is there more than one quality? A. No, we have several qualities of batteries. I don't carry it in my mind as well as I do the tire end of our business. But in a rough sort of a way, I would say to you that we possibly have five price lines. If you are interested, I would ask to give you that correctly, if you wish it.

It is shown on our price list. I think there are about five lines.

Q. Referring back for a moment to the tire question, Mr. Hoban, could you give us some idea as to the extent to which truck tires are sold through oil company outlets as compared to (2583) passenger tires? A. Oh yes, Mr. Boyd. Service station outlets are very fine places to sell passenger tires and very poor places to sell truck tires. The percentage of truck tires flowing through service stations is very small in comparison to passenger tires. Those

truck tires that are sold through service stations are the smaller type, for the pick-up vehicle and so forth.

When you get into big truck tires you are getting into specialized tire selling which has very little place in service stations.

Q. Could you give me some idea percentage-wise on that question?

Mr. Barton: What do you mean? I don't understand your question.

(2584) *By Mr. Boyd:*

Q. Are 90 percent of passenger tires sold through oil company outlets, more or less, and the balance truck tires? A. That is a very difficult question. You are wanting it entirely for the whole United States? Is that what you are thinking of?

Q. Yes, sir. A. You see some particular dealer that you might go out here to in Washington might sell one percent truck tires and 99 percent passengers. Then you might find somebody down in the smaller market that might go five percent on truck or five times more than the Washington residential dealer would do.

If you are wanting a figure just to kind of have in your mind, consider that it might be not much more than five, six, seven percent.

Q. On the sale of tires or TBA, I believe that the record indicates that quantity discounts are available to some extent on the dealer's purchases. Is that right? A. Are you speaking of service stations?

Q. Yes, sir. A. That has very little interest to service station dealers because their volume of business is not large enough for any quantities to get into the picture to any extent. Very minor.

Q. But if their volume of purchases is sufficient to qualify, they are included? (2585) A. Oh, yes, indeed. They get everything a regular B. F. Goodrich dealer does that has no connection with the oil company of any kind. The same thing exactly. Everything is available to them. There is no difference of any kind. But their volume, by the nature of their business, when you are talking about a thousand dollar dealer you are not talking about quantities and getting into quantity prices.

Q. Mr. Hoban, as to this TBA program with oil companies, and particularly the Texas Company, would you briefly describe it in your own words for us? First tell us, if you know, how did it get started? Did you start it? In other words, did you take the initiative in proposing it or did Teaxs take the initiative in proposing it?

Mr. Royall: Your Honor, I object to the inclusion of other companies in this question. I don't think he meant to put that in. I think he just dropped it in accidentally.

Hearing Examiner Kolb: I will sustain the objection to the question asked as to other companies unless Texas is specified. The objection will be sustained.

By Mr. Boyd:

Q. As to Texas, tell us. A. As to Texas I had quite a hand in the Texas relationship. B. F. Goodrich has been particularly interested in service station outlets as future development for the sale of passenger tires. We rather thought that some day tires might become more (2586) or less a convenienced goods item rather than a specialty product as they have grown up being.

We like the idea of a neighborhood service station and the opportunity to bring a passenger car tire service closer

to the automobile owner and his home, a place where he would normally trade.

So I guess in all probability on many occasions we talked to the Texas Company and tried to encourage them to speak with their organization and get their dealers into the tire business.

As, what is this new show in New York? The Reluctant Bride, or something—they were not hasty in getting into the tire business; they were slow. They permitted us to conduct tests in various areas of the country. And we conducted tests to establish with them how beneficial this would be for their dealers.

By Mr. Boyd:

Q. Was this only on tires or on the complete line? A. Primarily tires and batteries in these testing days that I am talking to you about. And some of the successes that we had developed, finally Texas Company's realization that maybe it did have some part. But if you want to get into the real situation, the Texas Company and the service stations never blossomed in the tire business until World War II, when rationing and limitation went on and suddenly the car owner (2587) needed a friend to keep those tires on his car running during this indefinite period and he appealed to the neighborhood fellow who was close to him and who could watch his tires and service them and so forth, and during that period of rationing and restriction two things happened: The consumer found that the service station could be of a real service to him in looking after his tires and batteries, and the service station operator found that this is something I have been overlooking here, this golden kind of tree here of opportunities to sell tires.

As a consequence of that since the World War II, since the period when rationing and price controls went off, I

guess about 1946, as I remember it, the service station has blossomed as a natural in selling passenger tires.

Q. Was the Texas Company the first company that you undertook this type arrangement with?

Mr. Barton: Objection. If we are going to keep out other oil companies we might as well go down the line on it.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Boyd:

Q. Mr. Hoban, I want to refer you to Commission's Exhibit 3-B, which is the second page of the Commission's agreement between B. F. Goodrich Company and the Texas Company. In the first complete paragraph appearing on Commission Exhibit 3-B, would you read that paragraph for me? A. "Said commissions will be paid upon all net purchases made (2588) by all of the above mentioned classifications of Texaco accounts, excepting, however, such "D" accounts as are not approved by the B. F. Goodrich Company and such "C" accounts where their location would cause a conflict with our already established distribution."

Q. Are you familiar with what a "C" account is and a "D" account? A. Yes, sir, yes indeed.

Q. Would you explain that exception that is in this paragraph where it says, "Excepting, however, such "D" accounts as are not approved." A. That is a very easy thing for me to explain to you. The Texas Company have many thousands of accounts. I would make a guess maybe 37 or 38 thousand accounts. Many of those accounts are in the petroleum business as a very minor part of their other operations, like car agents, like commercial garages, like service stations in commercial areas that service

trucking accounts primarily, general stores and roadside stations and so forth. Those are "D" accounts, those wide number of all types of accounts.

The Texas Company, they presumably, before they suggest an account to us, screen them to see whether they have TBA potential. But sometimes the screening job they do is not as complete as the screening job we do.

Then in many cases the "D" account may be a very very small merchant whose credit is such that we couldn't afford to (2589) extend any open account credit to him.

So on "D" accounts you are up against credit, you are up against the location not being suitable for TBA, the facility or the area or the kind of business or credit. So when those are looked at we just turn them down.

Q. Then as to "C" accounts, what is that? Is there a difference in the handling of them? A. Yes. "C" accounts in practically all instances are good outlets that would qualify for the selling of TBA. They would be fine facilities for the selling of TBA. But as I explained to you, we market through dealers. We don't just market through the Texas Company service stations. That is a minor part of our business. We market through dealers.

So in many cases we have a very fine dealer outlet. We may have had him for ten or fifteen years. And possibly a good facility might be available across the street from that dealer by the Texas Company, but we would have no interest in putting that Texaco dealer in competition to our well-established and good dealers. So we reserve the right to turn the account down. Not because of the facility but just because of conflict with our established distribution. We are not obligated to take any Texaco account we don't wish to take.

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(2591) *By Mr. Boyd:*

Q. In keeping with that, do they normally nominate to you only outlets that would not conflict with your other established outlets? A. Well, I will tell you: B. F. Goodrich is pretty aggressive after business. We don't wait for anybody to be nominating. We are out seeking business at every turn. If there is ground being turned that looks like it might be a service station of somebody's, we are right in there pitching.

So we don't wait for the Texas Company to take us by the lily hand and tell us about an account. But when it comes down to a Texaco service station operator that preferred to handle B. F. Goodrich tires that we would have to turn down due to conflict in distribution, it would be a very, very minor matter.

It is a great exception, you understand. We take them. We like them. They have fine facilities. Generally, they just fit in beautifully. We work hard on trying to sell them on B. F. Goodrich to take them on. It is only a rare exception, as I pointed out to you, where we have a wonderful account established over the years, giving us a wonderful volume of business, that we would not think of taking on that fine new Texaco facility if we could possibly sell the dealer into buying our franchise.

Q. I take it from your answer that you normally accept— (2592) the B. F. Goodrich Company normally accepts all "C" accounts that are nominated, generally speaking? Is that right? A. Well, I don't know what you are getting at on accepting accounts that are nominated.

Q. You attempt to sell? A. You bet we do. There is hardly any, just this occasional exception where we would ever turn down a "C" account if we could sell them. But boy, we have a job selling some of them.

Q. That leads us up to the procedure with respect to the handling of accounts, Mr. Hoban.

If the B. F. Goodrich Company sells an account before it has been nominated to them—sells a Texas account before it has been nominated to them by the Texas Company—does the B. F. Goodrich Company pay commissions to Texas on the sales made to that account? A. Well, the way that operates is this: Texas are alert, and you don't find them asleep very often. And if we are successful in closing one of their service station dealers very likely they knew that we were working on the problem long before we closed them, and when we did get the final contract signed and the order they knew all about it.

So what you seem to be referrring to as nominating, all in my language that amounts to is that they record at our operating center the name and address of the account for our accounting people to pay the commission on. That is (2593) all that amounts to.

Do I answer your question?

Q. Yes, sir; I believe so.

I take it from what you say that normally doesn't happen. You are apprised by them of the account, and then— A. Not even necessarily apprised by them. We are alert to the opportunities of selling goods. That is why we have these hundreds of territorial managers and supervisors and district managers and all. They are supposed to know when new stations are being built and where new opportunities to get business are going to exist. And they should be on the job before Texas Company even mentions to us. But sometimes they mention it and sometimes they even make arrangements for one of our territory managers to meet a prospective operator.

Generally speaking, we know about it before they ever talk to us.

Q. Mr. Hoban, let's take an instance in which you are not selling a Texas outlet. And say the installation is rehabilitated and the man that was selling it goes out of

business and a new man takes over, and you come in and succeed in selling him the Goodrich line. That is, you do that entirely. That is the B. F. Goodrich Company does that entirely on its own. Then would you pay a commission to the Texas Company on the purchases that that outlet made from your company? A. Oh, yes. You see the Texas Company really gets going (2594) after we make the sale of our franchise.

Q. Will you explain that? You say they get going. What do you mean by that? A. I don't know how familiar you are with it, but I will take a minute's time to explain to you the way these things operate. The Texas Company does very little, in my book—I don't want to say nothing—very little as far as selling a dealer the B. F. Goodrich franchise. That is done by the territory manager of the B. F. Goodrich Company who knows our prices, our programs, the quality of our lines, the types and kinds and distribution points, and he is a master in knowledge of our products, our programs, and our policy. He sells the Texas Company dealer.

Once that fellow is sold, boy, the Texas Company is a great help to us. A great help to us then. When we have our line established they have merchandising plans of their own. They know a good deal about our ideas of tire merchandising and battery merchandising. And with their own merchandising experience and with the training that we have given to them—I am speaking of the Texas Company organization—they are of a tremendous value to us in helping that dealer sell more of our products. That is where they come in. That is why we pay them this commission. We pay it to them to work for us, and we are constantly needling them to do more and more work in the dealer's place of business that we have established (2595) a dealer in order that he may sell and his people

may sell more of our products to the consumer. That is where Texas renders a service to us. That is what we pay for.

Q. Mr. Hoban, just where does it fit in the picture that Texas is notifying you as to outlets which it proposes to open? Isn't that an important factor in this arrangement? A. Well, that was an important factor during the period of shortage. We were very anxious to kind of keep a little ahead, you know, of their plans when tires were short. But they wouldn't have to appraise many things this year. We have enough merchandise this year that we would welcome them opening twice as many new outlets as they are opening, and we wouldn't require previous notice. We would handle it the same day if we got the chance.

But if you go back a few days we did ask for a kind of advance information, so as to be kind of better prepared to know what was going to be required.

Q. Even as of today wouldn't that prior notification be of considerable help in selling a new account? A. The fact that they are planning on opening maybe a new service station?

Q. Yes. A. In Washington?

Q. Any place. A. It wouldn't be of any help to us at all today unless we (2596) were told the operator's name and privilege to start going to work on him.

Q. That is what I mean. Who it is and who you could sell. A. That doesn't happen sometimes until the station is a week or two from opening. Quite often they don't have an operator at all. They run an ad, select a location, build the facility, and then try to find an operator with enough money to go in there. There is no use of our going to the Texas Company until such time as they have closed with an operator. We kind of like to get in there after they close with an operator as fast as we can.

Q. As soon as they have closed with an operator and they know that he is the man who is going to be there, and before the station is opened, they do give you that information, don't they? A. Well, as I said, sometimes Yes, sometimes No. Generally speaking, we find it out for ourselves before they tell us. If we can't we go to them and ask them. If they know, they tell us. I guess it is the custom or the same thing—I shouldn't discuss our other suppliers, I guess. With us, we generally try to find out for ourselves. If we can't find out we ask them. They are not at all reluctant to telling us after they have the operator closed.

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(2597) Q. After the plan is working, you have an account in which you are selling the Goodrich line, that is through Texas, will you describe for us briefly the mechanics of how you determine the commissions and just how it is paid, and who handles it? A. I am not sure that I am clear on what you mean. The contract that we have with the Texas Company sets forth the commissions. Our field organization have nothing to do with it whatsoever. Is that what you are asking?

Q. Who handles the actual payment of the commissions? (2598) The tires, for example, and how much is paid? A. You are talking about the mechanics of accounting and so forth.

Q. Yes. A. I thought you were talking about establishing rates in the field?

Q. No. A. Accounting is a very simple thing. The Texas Company sends us on some form—I wouldn't dare guess at it, even; I think it begins with an "S" but I am not sure—a list of their accounts into our district. That becomes the check list, let's say, that our operating department uses in connection with recording the business

by tires and tubes and automotive merchandise, and reporting the actual sales that we make to each one of those individual accounts monthly to the Texas territorial office designated for the particular district of ours that is in that territory.

And every month we report to the Texas Company by individual accounts, by individual districts of ours, our sales to those particular accounts. That is entirely an accounting matter. The sales department has nothing to do with it. They have no authority on rates or anything. It is all established. It just gets its list and picks up the figures and we pay by check to the Texas Company.

Q. On this initial list, on which you pay, if they buy—the (2599) initial list of dealers—these are the nominated and approved dealers that you have agreed on on which the commission is to be paid, is that right? A. I don't know of any nominating list that we agreed to pay on. We go out and try to sell an account. If we sell them, we know that the Texaco dealer and the Texaco Company knows—the Texas Company knows that B. F. Goodrich has signed them as a dealer, so they send a record of that name over to us. Sometimes our territory manager has already recorded it in our district.

But they send an official record, John Smith Service Station, 202 Forbe Street, Pittsburgh, Pennsylvania, to us, and that goes on the list that our accounting people keep. That is their instruction to pick off the ledger the actual sales to that account and pay the designated commission to the Texas Company monthly on the purchases made by that account.

(2600) Q. And then you pay only on those accounts that have executed this franchise agreement with you, either the franchise agreement itself or the associated dealer franchise agreement? A. That's right.

Q. What happens in the instance where the B. F. Goodrich-Texas dealer doesn't buy any TBA say for about 90 days? Do you continue selling him? Does anything happen then? A. Well, I can't tell you what would happen, but the District Manager of ours is looking over his outlets regularly and consistently. If one of them would go 90 days without purchasing, he would be checking in to find out why.

In most cases we find it is a credit problem. He has past-due accounts, we have orders on hand but we can't deliver them until we get the money. That is about what happens. Nothing has happened. We just keep trying to get the money. When we get the money we might take another gamble on a hundred or two hundred dollars on orders that are already waiting to deliver as soon as we can clear the man's account. That is what happens on most of those cases.

Q. In instances where he would not be buying, suppose it is not credit reasons. Would you seek out the assistance of Texas Company? A. The first thing of course, our district manager would be putting the finger, so to speak, on the territory manager and asking, "What is the matter that you are not getting any business (2601) from John Doaks." That would be the first step. Then the territory manager either would give the answer that it was credit, or he would say that, "I am having a little trouble, he hasn't taken enough interest and so forth." Maybe our district manager would say, "Why don't you get the Texaco service manager to make a call with you and find out how he can take advantage of the various things Texaco suggests to sell, and why don't you point out to him the potential again, go over the opportunities that our franchise offers and together see if you can't get this man into the business."

Because unless he is selling some other line he is just a pretty poor outlet for the Texas Company for the future, if he is just drying up on TBA. If he has gone off and bought another line then our territory managers get the job.

He has to sell him the idea that he would be a darned sight better off selling B. F. Goodrich products than you would be buying these John Doak tires.

It depends on what the problem is.

Q. In those instances, Mr. Hoban, maybe he is giving some thought to another line other than the Goodrich line. Do you then seek the assistance of the Texas man? A. Not as far as trying to present arguments in favor of B. F. Goodrich versus the other line. We wouldn't risk that. We are delighted to have the Texaco merchandise man help the fellow sell his goods. They have a lot of plans and programs. (2602) They do a swell job along that line.

When it comes down to the fact that he says, "I am thinking about another line instead of yours," that is when our territory manager, who is trained right to the nth degree and indoctrinated with B. F. Goodrich and the quality of our products and the opportunity to sell, and our tremendous merchandising program—I could take an hour to tell you about them, how superior they are to anybody else's—that is when he is supposed to move in and convince the fellow that the B. F. Goodrich merchandising, quality and product is what you ought to get back of and not give any thought to anybody else's being in our class, that your opportunities are so much greater.

We couldn't risk that. We wouldn't ask Texaco for any help at all on that phase of it.

Q. Do you seek his assistance on any phase? A. On the phase of encouraging the man to sell, teaching him how to merchandise, oh, yes. That is as I explained to

you before, the Texas merchandising salesmen, as I like to think of them—I understood there was some distinction here between general and others, I don't know that, they are all salesmen as I have seen them in the field and I have seen lots of them and talked to lots of them—they are of tremendous help to B. F. Goodrich in increasing the sale of the dealer's merchandise, our merchandise by the dealer to the consumer.

So if they can help us sell more tires and more (2603) batteries, or their dealers, that means we get the business. That is where they come in and do a job.

They are in far more frequently than our man. They are in there many times more than our men because of their close-knit territories. They are of tremendous merchandising assistance to us. When it comes down to closing an account we don't ask for help from them.

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(2604) Q. Would those divisions be concerned with other than oil company outlet distributions? Or are their activities to some extent confined to service station outlets? A. Mr. Boyd, I have tried to explain to you. We don't have any division of our dealers whatsoever. The manager of passenger car tire sales is interested in selling dealers. He hasn't the remotest interest whether it is a Texas dealer, Sinclair, Shell, or what it is. He is interested in selling B. F. Goodrich dealers. He couldn't tell you a single thing about whether he happened to sell Texaco products or not. His job is to develop plans, programs, advertising, promotions for (2605) B. F. Goodrich dealers, whether they are service stations or other dealers.

Q. Let's take the battery and accessories department. Do they handle the acquisition of those items? A. Yes, sir.

Q. The purchasing of them? A. Yes, sir. Batteries—let's stay with that if you would. Accessories are nearly entirely our own manufactured products. Maybe a few valves or something, Schraeder valves might be in there. It is such a small thing. It is mostly our manufactured products. But batteries, yes, they charged with the purchasing responsibility as well as the pricing and warehousing.

Q. Who supplies the batteries that you sell? A. We have two manufacturers. We have had for quite a long number of years. The Gould National Battery Company, with home offices in St. Paul, Minnesota, and the Globe Union Battery Company, home offices in Milwaukee, Wisconsin.

Q. Are contracts made with those battery manufacturers on an annual basis?

Mr. Barton: If your Honor, please, I don't know how this is relevant to the picture. I submit there is none.

Hearing Examiner Kolb: What is the relevancy of that?

Mr. Royall: Your Honor, we object to that. It hasn't anything as far as we know that remotely affects the commission system. Certainly it doesn't remotely affect Texas.

(2606) Mr. Boyd: Your Honor, I wish to show that their purchases are made on an annual basis, prospectively, part of which is based on the expected sale of these products to outlets of the Texas Company, among others; and that that plays an important part in their determination as to the amount that they will contract to buy from these producers.

And then I propose to show the flow of those batteries down through the various channels of dis-

tribution from the manufacturer to the Texas outlet. That is the purpose of it. Getting into the matter of the Interstate Commerce jurisdiction feature of it.

Hearing Examiner Kolb: Read the last question. (Question read.)

Hearing Examiner Kolb: The objection will be overruled.

The Witness: No, we don't make contracts with them on an annual basis. We have a continuing contract for our requirements. Whatever our requirements might be.

By Mr. Boyd:

Q. Do you notify them of what your expected requirements on an annual basis are? A. No, not on an annual basis. The way we operate with them is pretty much on a thirty-day definite forward and sixty-day estimate basis throughout the year. In other words, we would give them, say, sometime between the first and fifteenth of (2607) December or January requirements—our estimated February and March requirements. Then by the middle of January we would give them our definite February requirements and forward March-April requirements.

We are always working with them on a basis of thirty days definite and sixty days estimate. It is a continuing problem.

Q. Mr. Hoban, will you describe for me the system by which these batteries move from the manufacturer down to the ultimate user? A. You see, the battery manufacturers have a number of battery plants across the country. I don't recall when the two of them—they might have 15 plants across the country, strategically located, and they would ship those batteries to our district office or to our merchandising warehouse that I described to you.

In some cases they ship directly to our stores. In the case of very large dealers—it wouldn't apply to petroleum dealers; conceivably they might ship a very large tire dealer direct from the factory—and then from the district those batteries would flow either right directly from the district to the dealers, whether they be Texaco service station dealers or not, or from the district to a supply point in the case of a small service station dealer, which is the vast number of oil company dealers. They would be handled from a supply point, which gets its batteries from the district.

(2608) Q. And from the supply point? A. The supply point would go right to the service station dealer or the other dealer if he is a designated supply point for other than service station dealers.

In the petroleum business, if that is what you are trying to stick with here, your deliveries are all very small and they are made generally by a close by point. You will find as far as shipping a tire or battery or anything of that kind, the advantage of the supply point is the big thing. It would be right in the same market or right in the adjoining area. The closer the supply point is to the small dealer the better chance you have of enjoying his business.

Q. When you notify the manufacturer that during the next 60 days you intend to use whatever the requirements of the company are, do you take into consideration the amount or prospective amount of batteries that these various districts, supply points, and so forth will take from you? Is that right? A. Oh, sure. We take into consideration what our B. F. Goodrich dealers and stores have been buying and what they are very likely to buy. If we have a promotion coming we take into consideration that the business might be accelerated at some period. All those things are taken into consideration.

Q. And the amount that the Texas outlets might be buying, too? They are B. F. Goodrich dealers? A. There would be a small percentage of the total B. F. (2609) business.

Q. They would be taken into consideration? A. Oh, yes, to the small degree they would affect us. It would be very small against our total.

Q. Mr. Hoban, with respect to other accessory items—and I am referring now to things such as waxes, polishes, filters, spark plugs, things of that nature—do you buy those similarly as you described with batteries? That is, prospectively your requirements for a 60-day period? A. We have the same kind of arrangement: When you are talking about polishes, the DuPont Company happens to be one of our polish suppliers. They make up their own merchandise and they stock it in field warehouses. We don't have to give them our forward requirement. We are such an insignificant part of their business that we don't have to. It isn't like having our own brand battery. In the case of batteries that is our own B. F. Goodrich brand and we have to work with them on producing our own brand. When you are talking about practically all the other items we sell, it is a national brand, other than batteries, that is the national brand manufacturer's problem to have enough inventory so that when we give him orders he will supply them.

We don't have any worries about them. He has plenty inventory.

Q. Am I to take from what you say that you do not (2610) buy those items—filters, spark plugs and so forth—in such huge quantities as to buy them directly from the manufacturer. A. Oh, yes, we buy them directly from the manufacturer.

Mr. Barton: I object to the question, the hugeness of it. I think it can be phrased without using those terms.

Hearing Examiner Kolb: The objection will be overruled.

The Witness: We buy the Champion. Let's take the Champion spark plug. We buy them directly from the factory. We don't have to give him forward 90 days. We haven't become quite the factor in the Champion spark plug business that we have to work with him as we do with National, the Globe Union Battery Company, producing our brand of battery and only for us. Champion has a tremendous distribution besides B. F. Goodrich.

(2611) *By Mr. Boyd:*

Q. Your purchases then of Champion spark plugs come from the manufacturer? A. To us?

Q. Yes. A. Yes, sir.

Q. Do they move down through the chain of distribution, B. F. Goodrich Company? A. Not the complete chain. They would go pretty much the same way.

Q. As the batteries? A. Pretty much, yes.

Q. Are your needs or anticipated requirements of those items, spark plugs, filters and so forth, estimated in the same way? A. We don't give them any estimates forward for 90 days, if that is what you are referring to. I have tried to explain to you that we are such a small part of their business that they don't need for us to indicate to them that we are going to have a certain quantity requirement positively next month and estimate the quantity the next two months. They don't need that.

Q. Mr. Hoban, in placing your orders for these other items—accessories items—with the manufacturer, do you take into consideration the anticipated sales or the amount

you will sell through these various outlets that you sell to? A. Through all our B. F. Goodrich outlets, whether they be (2612) dealers or stores.

Q. And whether they be oil company outlets or— A. Oh, yes. That isn't in our classification at all. They are just B. F. Goodrich dealers, B. F. Goodrich stores.

Q. And the Texas dealers are B. F. Goodrich dealers, too? A. He would be a B. F. Goodrich dealer.

Q. Mr. Hoban, I hand you now what is in evidence as Commission Exhibit 129-A and B, and which I believe is a list or description and the name and address of each of your warehouses. Would you define for us the various categories of warehouses, beginning with the factor of shipping, and then the district office and so forth, as to what type warehouse they are? A. I would have to just repeat what I have already told you, Mr. Boyd. But I would be happy to do it.

Mr. Barton: Your Honor, I wonder whether this is necessary? The exhibits in evidence say district offices include all supplemental warehouses. I wonder whether it is really necessary to go into this detail on the question of interstate commerce which is admitted in our answer.

Hearing Examiner Kolb: Are you dealing with interstate commerce so far as Goodrich is concerned? Or Texas?

Mr. Boyd: So far as Texas is concerned.

By Mr. Boyd:

Q. I don't believe you have told us what a master warehouse is. (2613) A. The merchandising center would be the same thing. I think I referred to them as merchandising warehouses. It is a little nicer name.

Q. What about the term supplemental warehouse? A. That would be somewhere where we found it necessary to store some Texas stock temporarily. A temporary place.

Q. And dealer warehouses? What are they? A. They would be a place where we have established a warehouse in a dealer's place of business which he operates for us. I mentioned a very few warehouses, as I outlined to you. If you notice there there are very few.

Q. Mr. Hoban, what is a divisional operating center in the B. F. Goodrich Company? A. Back a great many years ago we had an operating—an accounting unit in every one of our district—31 districts. We made a test in one area of bringing the accounting work of five districts into one spot where, with new type equipment and all we could handle the accounting and issuing of invoices and monthly statements much faster and more efficiently. We tested whether there would be any complaint on the part of dealers from getting their invoices and monthly statements from some other point than the district office with whom they were in constant contact on the sales problems. We found that as far as the bills and statements were concerned, the dealer didn't care where it came from, just so long as he received it reasonably (2614) promptly.

We then proceeded immediately to eliminate the accounting offices in every one of our other districts and we went to this five plan that you speak of, which has not only speeded up and made us far more efficient, but I am happy to think we have saved a couple of bucks for our good company.

Q. Would those centers also handle the accounting and determination as to the amount of purchases or sales made to Texas outlets and the amount of commissions due to the Texas Company? A. They don't have anything to do with the amount of sales.

Q. Accounting-wise? A. They are just accountants. They pick up the information that the district sends them and compile it and follow the instructions that are given to send a check for the amount involved. It is purely an accounting procedure, Mr. Boyd.

Q. That is handled on a monthly basis? A. Yes, sir.

Q. Mr. Hoban, on Texas outlets, as to their acquisition of supplies from the B. F. Goodrich Company—in other words, will you tell us from whom the service station dealer acquires his stock? A. I could tell you in a broad sort of way that in order to supply small dealers you have to bring your source of supply very close to them.

Q. Is that what is known as a supply point? (2615) A. Yes, you have to bring your supply point close to them. So in all practical instances, in a city, if it is a large city, it would be within the county or very close. The small dealer has to be served by supply points very close to him. So you would be talking about a city or county or something of that nature.

Is that what you are getting at?

Q. Yes. A. There is no factory shipping to a small service station involved. They never get the business. They can't buy that way. They have to have a close, quick, nearby source of supply.

Q. How is it determined let's say in this vicinity? A. We have located in Washington, D. C., if you are talking about the District here, a district office. That is one of our 31 district offices. And our district manager here would be the final one in approving the setting up of the supply point. He would have as a background for setting it up his intimate knowledge of the number of dealers and the location of the dealers, and whether or not he could increase his business by setting up a particular type of supply point or changing it if he wished to change it. It would be at the discretion of our district manager.

Q. How many outlets do you normally assign to a given supply point? A. That varies tremendously, Mr. Boyd. If you are talking (2616) about a metropolitan city, a man might be serving 150 towns. If you are talking about a much smaller community, he might only be serving 25 or 30.

Q. Does a B. F. Goodrich supply point—incidentally, are they independent supply points? A. Yes, sir.

Q. Those would be franchised? A. Yes. Goodrich dealers, wholesale classification. B. F. Goodrich dealers, wholesale. You will find "WA" as you look at our price list.

Q. Do these supply points sell only to oil company outlets? They distribute only to them? A. No. We do not restrict them to only oil company outlets for the same reason I explained to you before. We don't differentiate between our dealers, whether they happen to be an oil company outlet or not.

It is true that most small dealers are service station dealers, not all, however. Not all. So that a supply point might be serving a hundred oil companies stations, many of whom have nothing to do with the sales commission plan of any kind, and he might be serving an accessory store-front small dealer, or a car agent. We don't restrict him just to service stations. He serves whatever dealers we assign to him to serve. In some cases we give him the privilege of picking up some business on their own. And hope they do in some cases, Mr. Boyd.

(2617) Q. Texas outlets are normally assigned are they not to one given supply point? A. Nearby supply point.

Q. Nearby? A. Yes.

Q. That would be the only place from which he would obtain his supplies? Is that right? A. Generally speaking, yes.

Q. In other words, he could not go to any other B. F. Goodrich dealer, company-owned or independent, to obtain his purchases? A. If you recall, when I described our stores I told you that they were available for emergency pickups.

Q. But other than emergency they would go to the assigned supply point? A. He would go to the assigned supply point. But in an emergency he could go to a B. F. Goodrich store. If he could go to a B. F. Goodrich dealer would depend on his relationship with that dealer. If they were buddies, friends, and exchanged merchandise, no doubt he would. We have nothing to do with that.

Q. The actual record keeping would be at that assigned supply point? A. Yes.

Q. Are consultations had with the Texas Company to determine where would be the supply point for its given station? (2618) A. I wouldn't doubt but what a Texaco supervisor or zone manager might advise with our territorial manager. The way in our organization it would flow, our territorial manager would make his recommendation to either his wholesale supervisor or directly to his district manager. And also the supervisor or district manager would check into the problem and make the decision.

In the course of that it is conceivable that the zone manager more likely than anyone else, and maybe a supervisor of the Texas Company, might talk it over with our territorial manager and say "wouldn't it be a good idea if you had a closer supply point here? We think you could increase your business."

Q. Do the oil companies ever request that an outlet—that the supply point for an outlet be changed?

Mr. Barton: I object, unless it is as to the Texas Company.

Mr. Boyd: That is understood in this question.

A. I would say that the Texas Company is always interested in improving the service to their dealers, and if they felt in any place that one of our supply points was falling down, they would be calling it to the attention of our territory manager or wholesale supervisor or district manager that they felt that the supply point should be improved. They would not dictate to us in any way. But they would complain about poor service. If our investigation showed that it needed attention, certainly (2619) our district manager would give it attention, either to have the supply point do a better job or if necessary change the supply point.

(2620) *By Mr. Boyd:*

Q. Mr. Hoban, I believe you described the people that were calling on your dealers as territory managers? A. Yes, sir.

Q. I am curious now. Do any supply points—I guess independent supply points would have salesmen possibly calling on accounts, too? A. Yes. They would just be picking up orders and delivering them. They wouldn't be doing selling. They have nothing to do with establishing selling. They would be just the service. They would be picking up orders at supply points.

Q. Would there be any difference between a company-owned supply point and an independent supply point? A. You speak of a company-operated supply point. You are talking of wholesale operations apart from the district. They would be merely making delivery. Local supply point does a little bit more. Local supply point, they might pick up an order. Certainly we wouldn't have any objection to that if he could pick up a few batteries or an order for a half dozen tires. That would be a fine thing to do. He doesn't do the selling. The territory manager does the selling. The supply point delivers the merchan-

dise and does pick up orders if he gets a chance. But he is merely carrying out the service phase of the business.

Q. The B. F. Goodrich owned company retail stores, are they (2621) frequently supply points for service station outlets for Texas? A. Not frequently. I mentioned to you that there were some exceptions. And we do have some exceptions where we haven't been able to obtain the independent supply point or we don't have a sufficient volume of business for the man to be happy and make a profit out of. We use the store in just a few cases.

Generally speaking, as I told you, our stores are in the retail business. We try to keep them there.

Q. Mr. Hoban, I believe there is in evidence a basic stock or inventory guide, from the Goodrich Company, Exhibit 52? A. We have a much more up-to-date one.

Q. This was prepared by your company (handing)? A. Well, if I might in modesty say B. F. Goodrich developed the finest program that has ever been developed in service station selling in the form of this industry guide, inventory guide. It is a development by B. F. Goodrich of which we are very proud. In our business when you are proud everybody rushes to copy what you have done after they have seen it operate for a year. You can be sure it is good when you find that happening.

We are the boys who developed this program and it is a wonderful thing for the dealer. It is our plan, widely copied now by others in this business, large and small tire dealers.

(2622) Q. Mr. Hoban, on what basis were these suggested stock assortments or quantities of items established that appear in this exhibit? Under the column "Suggested Stock Assortment" there are three categories. Then it lists the number of items of that particular—the number of TBA items that it is suggested be carried. Who made that determination? A. Let us just take tires as an exam-

ple. We know how many of a given size. Let's take the most popular tire, 6.70 x 15, which fits the Ford and Chevrolet car. We know how many tires of that kind are manufactured and sold in the country. As a consequence, against the total number of tires that has a certain relationship. Say it is 50 percent of the total number of tires sold in that one size.

In that size we know the number of white tires and the number of black tires. We have the statistics for the industry on that. We know what our own experience is on that. We know our experience by sections of the country. So we take the industry totals, which we secure—if you are interested I can explain all that to you—and then we take our own known experience, and on the basis of those two factors we get down to the local level.

Here is a man who has in our opinion, based on his gasoline gallonage in the area in which he operates, a potential of so much in tires. Then based on the statistics that I have outlined we break that down into the size and the (2623) type of tire. And that is adjusted to local conditions because in some sections of the country more of one size is sold than nationally. And the dealer and the territory manager have local knowledge. They take our suggested national pattern and they adapt it right to the local dealer and local community.

It is a very understandable way. It is not perfect but it is a very understandable way. The idea of this whole thing is the king bee. When a dealer intelligently arrives at his basic stock he has the advantage of having the fast-moving sizes in the right quantities and the slow-moving sizes in the right quantities. And if the plan operates as it should, and does in the vast majority of cases, he gets a better turnover on his merchandise. And he loses less sales.

If he gets better turnover and loses less sales he makes more money. The whole program is just a thrill and a delight to a dealer who actually works with it for a length of time to really get the feel of it. It is a tremendous success.

Q. Could you give us some idea as to what it would cost a dealer to stock—if he carried everything that is in column 1—what would be the total investment he would have? I would like to know the investment in 1, 2, and 3, if a dealer carried everything that is in the suggested inventory. A. This primarily, as you know, is for service stations.

(2624) Q. Oil company service stations? A. No, just service stations and small dealers. It isn't intended for a great big large half-a-million-dollar tire dealer. And the stock assortments that run in round figures from say $1,000 to $2,500, in round figures. When you get down to the actual application of it you have to see what his potential is in his own station. If you are talking about a service station, one of the best guides is what is his gallonage. We know national figures on how much TBA is sold per a gallon of gas. There are good yardsticks of estimates on all those things.

So we have a pretty good idea of potential. We know how many customers the man has, we know how frequently most of them come in his station. If you intelligently approach this thing you can get right down to a 90 or 95 percent accuracy on the actual number of potential tire sales he could make if he would really make the plan work and do the right sort of a promotion and selling job.

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(2626) *By Mr. Boyd:*

Q. Mr. Hoban, I hand you again Commission Exhibit 52. You gave us a figure of $1,025 as regards tires that would be the cost, I take it, of the suggested tire inventory. Would that be as to one, two or three referred to in here? A. On tires the assortment would run from about a thousand dollars to twenty-five hundred dollars. Now—

Q. That is between one and three? A. Yes, sir. Between one and three.

Q. Could you break it down as to one and two? A. You can't break it down in a definite figure. Number one might in one case be $890 and in another be $1,200, and two would be fifteen to eighteen hundred dollars, and you might conceivably have three that would be $2,200 and maybe another one $2,700. It is an assortment of figures.

Q. Give us similar information as to batteries and other accessories. A. Batteries would run from a low of maybe $100 to a high of $500.

Q. And accessories? A. That is very small. They would run from a low of $50 to a high of say $250.

Q. We were discussing earlier, Mr. Hoban, the matter of how batteries moved from the manufacturer down ultimately to the station outlet, would you tell us now as to tires that are (2627) produced by your company, how they move down through that same chain. Is it similar to that? A. I thought I covered that in quite some detail earlier in the morning when I gave you the flow. Five factories into what I described to you as the merchandise warehouses, big, large master warehouses as you had them on your sheet. I think I called them merchandise warehouses. From those merchandise warehouses to districts or to stores or dealers. And then in some cases from districts to stores and dealers and in some remote cases from merchandise warehouse to the dealer warehouse, those two or three examples that you had there.

In other words, it just flows on down.

Q. And from there to station outlets? A. From there it goes to the station outlet or to the supply point for the station outlet.

Q. On the service station outlets—Texas service station outlets that are B. F. Goodrich dealers, what arrangement is made for identifying that station as a B. F. Goodrich outlet? A. I think we do a pretty good job of identifying them. We have for our B. F. Goodrich dealers certain types of signs. All of them are not suitable in any one place. You have to adopt them to the particular place. Some would be wall signs, some would be post signs, some would be fence signs.

The Texas Company have a little manual and we work (2628) with them on it, that gives us a guide of the way they think identification looks best. But the net of the whole thing is that our sign truck pulls up there and he tries to identify it in the best possible way he can with B. F. Goodrich.

If he has a cooperative dealer we do quite a fine job of identifying it. We don't overdo it, because a cluttered place is not good. But we have the suggestions of the Texas Company and we look the premises over and unless the dealer is strong-minded about what he wants done we go right ahead and adequately identify the place with B. F. Goodrich.

Q. Do you normally follow the suggested line of Texas in this book that you referred to? A. We pay attention to it. We were part of creating it you know. It is a good balanced thing. But we don't have any instructions where we have to follow it in any way. We work it out in each location. Some dealers are very finicky about the identification. They want limited identification. Some we are able to go considerably farther than Texas suggests, and

we get more B. F. Goodrich. On the other hand we don't want to just clutter the place with our signs. There is a proper way of identifying a station, if I can explain to you our viewpoint on it. We like to have the identification prominent, but we don't like the place to look cluttered.

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(2629) *By Mr. Boyd:*

Q. With respect to that suggested station identification booklet you were talking about, do you have something further you want to say on it? A. We have a booklet of proper identification of our dealers. I think in there we show service stations and suggested identification of service stations in there. That would apply to the Texas Company or any other B. F. Goodrich dealer that was operating the service station.

Q. To the extent of service stations I gather from your earlier testimony that has been worked out to some extent with the Texas Company. Is that right? A. We have shown them suggestions and I am sure that they know what our identification plan for service station dealers is.

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(2630) Q. Mr. Hoban, who pays for this identification at the station outlet? A. B. F. Goodrich.

Q. Does the Goodrich Company engage in any cooperative advertising with the service station outlets of the Texas Company? A. Yes, sir. We engage in cooperative advertising with all B. F. Goodrich dealers that we can encourage to use our suggested advertising and promotion. And part of this three-step plan that I told you about, of which this book (Exhibit 52) step one, involves the actual use of advertising of promotional material which we cooperate with the dealer on.

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Joseph A. Hoban, for Commission—Direct

Q. Earlier I believe you mentioned, Mr. Hoban, that you didn't sell to every station outlet but I gathered from what you said (2631), that you had some qualifications set up for B. F. Goodrich dealers. Is that right?

Mr. Barton: Wait a minute, your Honor. I thought we went over this about two hours ago in some detail. Unless there is some pressing reason I would suggest—

Mr. Boyd: I want to know if he makes any deviations pursuant to suggestions from the Texas Company.

Mr. Barton: Then I have no objection.

By Mr. Boyd:

Q. In other words, deviations from what you consider to be the ideal B. F. Goodrich outlet? A. I discussed with you what is called "D" accounts and I discussed with you what is called "C" accounts.

Q. Yes, sir. A. I told you on "C" accounts that unless there is a conflict in distribution, their facilities and all are usually such that we welcome them and rush to get them as B. F. Goodrich outlets.

On "D" accounts many of them are totally unsuited for the sale of TBA merchandise, due to location, facility, many of them due to credit and other reasons. We screen them and turn down those whose credit, facility, other type of business or what not, including credit, disqualifies them from being the kind of outlets that would do both our companies credit in the TBA field.

(2632) Q. Right at that point, suppose the Texas Company has a different feeling, that they think it is a pretty good TBA. A. We are the one to make the decision and we make it.

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(2633) Q. How did the B. F. Goodrich Company sell its TBA before it had any arrangements with oil companies on a commission basis?

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A. Well, as I recall, the first contract that I remember we had with the Texas Company it was made before my time at the home office. I think about 1940. So I guess you are talking about a period prior to 1940.

(2634) We didn't have TBA as we know it today prior to that time, Mr. Boyd. Would you like me to explain how we sold tires and a few other additional items we may have had prior to that?

Q. You sold only tires then, I take it? A. I wouldn't say we sold only tires. It depends on what period you want to get into.

Q. Prior to the time of these arrangements, 1940 that you referred to. A. In 1940 we were selling batteries as well as tires, as I recall. We didn't have a diverse sideline of auto supplies as we have today. But I wouldn't be able to say to you that batteries were the only item. Maybe we might have had tire repairs. Yes, in those days we fixed punctures and we had tube repair kits that we sold, and items of that kind.

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(2635) Q. Immediately prior, I am talking about. A. Immediately prior to having any arrangements with the Texas Company we sold tires to tire dealers primarily, and through company-owned stores, and to those service stations as we do today that we could interest in selling tires. And if you remember I explained to you that the service station in the new tire business didn't blossom until World War II, in the period from 1942 to '46 when

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they suddenly found that the consumer liked to come to them to keep the old tires going.

Having gained that customer contact they blossomed in 1946 into being worthwhile outlets. Prior to that they were a minor factor in passenger tires, and passenger tires were sold through company stores, tire dealers, car agents, garages, outlets of that type.

Q. I gather from what you said earlier that you sold tires primarily, and batteries to some extent, but you didn't sell accessories to any degree? A. Actually, we sold accessories but different kinds of accessories. Tube repair kits today are not a very fast moving item. But in the Thirties there were just millions of (2636) those sold. You wouldn't want to go out on the road without a tube repair kit. There were just millions of them sold. That is an item that we sold.

It was a very limited line, if I can make my point to you. It was a limited line of what today is known as TBA. We had the tires, we had the batteries in 1939 and '40, and we had a very limited line of accessory merchandise that was available to the dealer trade.

Q. Since this agreement with the Texas Company, has that been one of the factors or the factor which has caused you, the B. F. Goodrich Company, to market auto accessories to a wider extent than it did prior to the time of the commission arrangement? A. No, I wouldn't think so. I would think that the reason that we are selling more auto accessories today is that B. F. Goodrich dealers generally have found diversification helpful to their retail profits, and that applies to a B. F. Goodrich dealer who is not selling gasoline and oil. He has found that by adding batteries and auto supplies, in some cases even getting a little farther diversified into some of our lines like possibly small radios and something of that nature, that he is able to make more sales to the same customers and have them

come back more frequently and very substantially add to his profits. I think we have developed more of a rounded franchise, Mr. Boyd, that makes more profits for the dealers generally, (2637) not just the service station dealers, but the dealers generally.

Q. Then I take it you attribute no part of it to the fact that you sell Texas outlets that you have this wider line of TBA that you carry now, particularly the accessory end of it? A. I wouldn't want to reflect upon the value of a very fine association that we have with the Texas Company and thousands of their dealers across the country. They are of value to us. But the service station business—not the Texaco business only—the service station business in the passenger, battery, and auto supply field has changed its complete complexion in the period of 1942 to 1955.

As a consequence of that change we have certainly been keeping up with the parade. In fact this, if I ever got into steps 2 and 3, I would be able to explain to you that we are outstanding leaders in the merchandising at service stations. That is not entirely Texaco. It applies to all the other independent service stations that we have.

(2638) Q. Mr. Hoban, have any determinations been made by your company as to the average amount of commission paid to the Texas Company on sales that you make to their outlets—I mean by that the averaging of the various categories, five percent, seven percent, and 10 percent—to some average figure as to the amounts of commissions that are paid? A. It varies every year, depending on the volume of business that flows through the 5, 7½ and 10. As you would know, I carry figures of various years in my mind. I couldn't identify them to you. But I would guess—it is a matter of a mathematical calculation, you know; it depends entirely on the flow of business—I would guess 8.3 to 8.6 would be the range at which the thing would average out.

Q. That average figure would be, would it not, an additional cost to selling B. F. Goodrich TBA through Texas outlets? A. It would be an additional cost less the value we get out of the very unusual services that the Texas Company renders for us.

Q. If there were no such commission arrangement, would your company have to employ any more sales people in order to sell TBA products to the Texas outlets? A. I am afraid we would. It would vary very greatly, because it depends entirely on the type of account. For instance, in a metropolitan area where the Texas Company has these merchandise salesmen coming into the dealer's place of business once (2639) a week or twice a week, we can route our salesman so that he only comes there maybe once every month or once every six weeks.

If we didn't have the continuous merchandising assistance of the Texas Company with that particular dealer, our salesman might have to come there every two weeks to be sure that the merchandising was going on and that the application of programs and all were being carried on. So the Texas Company takes that burden off our shoulders and enables our man to be spread out into more area, thereby saving his money.

We have a lot of counter to the 8.3 or 5 that we pay the Texas Company, we have a lot of counter savings, one of which is manpower, and another is additional sales that we would never be able to make through that dealer if they weren't in there far more frequently encouraging them through their merchandising techniques to take advantage of the opportunity to sell.

Q. When you said they, you meant Texas? A. Texas merchandising representative. The more they can get this fellow to sell more tires to the consumer, the more tires we send through the station. They do a whale of a job increasing their business by their frequent contacts.

Q. One final question, Mr. Hoban. With respect to this identification program, does the B. F. Goodrich Company seek the assistance of Texas in getting dealers to identify themselves as B. F. Goodrich dealers? Getting its Texas dealers to identify themselves as B. F. Goodrich dealers?

(2640) A. I would think that would be part of the merchandising assistance that the merchandise salesman would render. Generally speaking, you don't need a great deal of help. If a man takes on a B. F. Goodrich franchise, by that time he is so indoctrinated with B. F. Goodrich that he is proud of it, he wants the signs out and he wants them put out prominently in a manner that would draw customers to his place of business. So you don't have very many problems with dealers. You might have a question of whether he would prefer one kind of a sign or whether he would prefer it here or there. But you don't have to rush to the Texas Company to get any help. If that man is sold on B. F. Goodrich, he probably puts out our shingle and ties to that for making money.

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(2641) *Direct examination (Resumed) by Mr. Boyd:*

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(2643) Q. Again, Mr. Hoban, I hand you the two exhibits, 42 and 44. Under Commission's Exhibit 41, it provides that the tire company receives that Commission Exhibit 42, Form 287, and the account sets forth the details of the account as to its prospects as a TBA purchaser.

And then the tire company either accepts or rejects the account. What I want to know, Mr. Hoban, is can you give us some idea as to the number of Texaco outlets which have been nominated or given to your company to sell by the Texas Company? A. I tried to explain to you that my understanding of "nomination" and yours is slightly dif-

ferent. What this means to me and to the B. F. Goodrich Company, as I understand it, is that after we are successful in selling a B. F. Goodrich franchise to a Texaco dealer, that the Texas Company, for the purpose of the record, file a form, and maybe this is the exact form, and send it to us to record the name and the address and so forth of the customer.

We have already signed him up and we already (2644) have the customer for B. F. Goodrich.

This then becomes the record of the account from which we start setting up our necessary accounting to pay the commissions to the Texas Company. That is the way it works.

Q. What is the provision in here about accepting or rejecting the account? A. We have already accepted it because when this comes in to us we have already sold the account. That is the way the thing operates.

Q. Referring you to Commission's Exhibit 118, which shows the total number of Texaco outlets, total number of "C" dealers, total number of "D" dealers, and also the number of "C" and "D" dealers that are buying Goodrich TBA, referring to the year 1955—that is a complete year—and the figures December, going across there, it shows that in December 1955 the Texas Company had 13,366 "C" dealers. Going to the column "C" dealers under tires and tubes, it shows that the B. F. Goodrich Company sold tires to 2,729 of those "C" dealers.

What I am trying to get to is, were all 13,000 of these "C" dealers nominated to you and you just sold 2,700? Just what is the picture? A. It so happens that we are not successful in being able to sell all Texaco dealers in the United States. We have competition in this business. And a certain number of these accounts have been sold by another supplier that the Texas (2645) Company blesses, and possibly a large number of these accounts are selling other than sponsored lines of TBA merchandise.

We do our very best job of selling all the "C" accounts with the exception of that very few that I spoke to you about where it might be in direct confliction with our distribution. We try our best to sell all of them. But as good a salesman as we are, and with the fine progress we have made, we haven't quite been able to accomplish that feat. It is a pretty competitive business.

Q. Mr. Hoban, does the Texas Company ever submit to you, or have they ever submitted to you a list of dealers for you to sell? In other words, that these are the ones we would like you to sell, we will give them to you, and prior to your having signed one up? Do you see what I mean? Prior to your signing him. As I understand your testimony you don't sign this agreement until you actually sold the dealer? A. That is right.

Q. Don't they give you some dealers that you endeavor to sell? A. I don't think they gave us any dealers at all. I think that we endeavor to sell all Texaco dealers excepting the rare cases where it conflicts with our distribution.

Q. To come back, don't they give you some to sell, a list or group to sell? A. Never.

(2646) Q. Potential dealers that would be B. F. Goodrich? A. Do you mean could we ask for a list of all Texaco dealers in the City of Chicago or something if we wanted it?

Q. No, sir. I mean the ones that they give you to sell. A. They don't give us any Texaco dealers. Never have given us any Texaco dealers, that these are the ones we are supposed to sell. We are supposed to sell every Texaco dealer in the United States that we are capable of selling, and we would like to sell them all. We won't stay out and never have stayed out of any Texaco dealer's place that we felt we could use in our normal distribution selling.

I know of no listing that you are talking about that they would give us to sell. I don't know that I fully understand your question, unless I have answered it for you sufficiently.

Q. Referring you again, Mr. Hoban, to Commission Exhibit 118, and again to the December figure under "C" accounts, tires and tubes, would those be the only accounts, that 2729 figure there, that were nominated to your company by the Texas Company?

Mr. Barton: I am going to object to that question, your Honor. Mr. Glenn yesterday testified at length as to the basis upon which exhibit 118 was prepared, and what the individual figures on that exhibit represented. And it is already in the record as to what each of those figures represented.

As I recall it it was a very complicated setup on the basis of an examination of certain forms in the Texas records as (2647) to whether a dealer had made a dollar purchase or more in a month's period or a three month's period.

I submit that it is not proper to ask this witness, who didn't get up the exhibit, and who may not have heard Mr. Glenn testify as to what the particular figures on here represented, a question concerning what a figure on that exhibit represents.

Hearing Examiner Kolb: Read the question, Mr. Reporter.

(Question read.)

Hearing Examiner Kolb: I will overrule the objection.

A. I wouldn't be able to answer that question, Mr. Boyd, because naturally I don't carry in my mind the number of "C" Texaco dealers that the B. F. Goodrich Company are selling in some one month of the year. And I have no

idea whether we sold 1,500 more or a thousand more or some other time during the year.

I couldn't verify that figure at all. I have tried to explain to you the manner in which we obtain the business and I don't think I can make it any clearer than I have to you.

By Mr. Boyd:

Q. What I am trying to get to is did they nominate a group—I didn't expect you to be able to tell me precisely how many may have been nominated—but did they nominate to you say 3,000 and you sold 2729 as reflected on this figure. That is what I was trying to establish. A. They don't nominate any groups to us at all. There is (2648) none of that done. I don't understand what you are getting at. There is no allocation of accounts, there is no nomination of a group of accounts or anything like that ever existed or does exist.

We have to go out and one over one we have to sell these accounts. And then they are put on the record form. And what that is is that at some time, whether it is December, the month of December or whatever the gentleman testified to, that particular month, we actually sold some quantity of merchandise to 2729 "C" dealers.

Maybe we are selling 3,500, or 2,900 or some figure. Certainly we sold every one we could.

(2649) *By Mr. Boyd*:

Q. Then everyone you ever sold to would have one of these forms, I take it, which you have approved? That is form 237, Commission Exhibit 42? A. I would imagine that this form, or some other form similar to it, was sent to us on every account after they became a B. F. Goodrich dealer that were a Texaco dealer. That form or some

other form, recording the name for the payment of sales commission.

Q. Then could we have that information as to how many of these that you have, that have been nominated, or that this form has been given it by the Texas Company? A. I couldn't answer that question because I don't think that information is available. The information that is available would be the information shown on the records of the Texas Company as to those accounts that we have done business with. We don't have any list of accounts other than those that we do business with.

Texaco Company may have their own list of those 30,000 "D" dealers. We don't have them.

Q. Is it your testimony that you do not have these forms, Commission Exhibit 42, form S-237 in your records, that you make use of in selling to Texaco outlets? You don't have these and keep them and use them? A. We don't use them for selling at all.

(2650) Q. Do you have them? A. They have nothing to do with selling. I have said to you that I can't testify as to that exact form. I can say to you that a form of some kind is used by the Texas Company in listing with us the name of a given Texaco dealer after we have sold him the B. F. Goodrich franchise, and that listing is for the purpose of our recording ourselves and paying them their sales commission, and we have that record.

I can't testify to the fact that it is that form. It could have been some other form, and we may be using a different one now.

Q. I hand you now Commission's Exhibit 128-A through F. Would every Texaco account have one of these forms executed by your company with it? A. Every Texaco dealer who is a B. F. Goodrich dealer is on one of those two forms.

Q. Would your records show the number of Texaco accounts that have executed these franchise agreements either as a tire dealer or as an associate Goodrich dealer? A. Not as being a Texaco dealer. I could give you, if it is relevant to this case, the number of B. F. Goodrich dealers that we have. But we don't classify the Texaco dealers. They are only a small part of our national distribution of tire dealers.

Q. Do you mean that your records would not show which (2651) B. F. Goodrich dealers were Texaco dealers? A. No, sir. We have a list of our contract dealers. We have a list of our associate dealers. We can go into our accounting and find the payments, through our payments the number at any time of dealers that we are selling and paying commission on. But we don't group our dealers that way at all; don't keep records of them that way. You see you confuse the point that there is some difference in our business between a Texaco dealer and a B. F. Goodrich dealer. They are synonymous.

When we get a B. F. Goodrich franchise and a Texas dealer he is a B. F. Goodrich dealer. We have no other kind of a dealer.

If he is selling Shell or anything else he is a B. F. Goodrich dealer once we get him on that dotted line. We have no differential between this one, or difference between them, or records of any kind. They are B. F. Goodrich dealers, Mr. Boyd.

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(2652) *Cross-examination by Mr. Barton:*

Q. Mr. Hoban, I have noticed during the course of your direct examination that several times you spoke about the promotional program which the B. F. Goodrich Company had, and in particular (2653) you noted that the Inventory Guide, Commission's Exhibit 52, was one point

in that promotional program which the B. F. Goodrich Company had and which the Texas Company assisted in carrying out in connection with Texaco outlets.

I would like you to explain briefly what the other components of that promotional program of the B. F. Goodrich Company are. A. When you get me off these statistical forms and on to a question that has to do with promoting the sale of merchandise I am very much at home and I understand it all very thoroughly.

The master merchandising program has several parts, and I will try to do it very briefly for you. The basis first is the Inventory Guide, which after careful analysis sets up a base stock which would give the maximum amount of turnover and the maximum amount of opportunity to sell which should result in very much improved profit for the dealer.

The second phase of the master merchandiser program has to do with the training of the operator.

We have a very extensive and very down to earth practical training plan. We teach a service station dealer how to trade tires. If you don't know how to trade tires you are just about passing up 50 percent or more of the opportunity to be in the tire business.

We have a meeting, a training meeting that we hold. That is where the Texaco merchandise salesmen are of such great (2654) help to us. They are thoroughly acquainted with our training techniques. They have sat through our meetings with our own organization, and they help our territory manager put on this program. And it is a program like you might liken to "Meet the Press." We have a back and forth exchange between the service station operator asking questions and the one conducting the meeting. It might be our own territorial manager assisted by the Texaco merchandising salesmen, giving them the right approaches and the right answers to trading tires.

I could go into this in great detail with you but possibly that is enough to say about it. It is only one example of countless training programs that we have and that we are assisted in putting into effect by the Texaco salesmen.

The third phase of it was something that was long needed in service station marketing, and that was some way for the small merchant, the small dealer, to use advertising himself and directly at his particular station get some value out of the tremendous expenditures for national advertising that we do.

So we developed a program, and it consists of a jumbo mailing card, which offers a very unusual special. We call the products that we use in this promotion "traffic builders." We will take an item that we have pre-tested—and I can explain that to you later, if you wish me to—and we have (2655) a very attractive price on it. To that dealer, he buys the complete master merchandiser program which consists of a certain number of those jumbo cards to send to anywhere from a hundred to maybe 500, if his territory is that large, and if he is that large a dealer, inviting them to come in and take advantage of that particular promotion.

The very week that he is sending out those cards in his city or his community, over our great national Texas show, the Burns and Allen show, we are plugging that very traffic builder at that sensationally low price. If he opens page 1 of Life Magazine there it is in the Life magazine. So we are tying national advertising right down to that little merchant's local place of business.

The first time it has ever been done in the tire industry, and it is just a phenomenal success. And we go to a great deal of expense and trouble.

In the application, the follow-through of all that, we make good use of the Texaco personnel.

Is that enough?

Q. Yes. What is the story on this pre-testing item? A. I could spend so much time—and I don't think you want me to go into the details of it. You know when you are going to have a so-called promotional item, the judgment of a group like these gentlemen right at this front table here is not sufficient. They may be unanimous in thinking that a particular (2656) item is a very good promotional item to attract people. But until you put it to the acid test you never know. So we have some 50 service stations that work with us 12 months of the year, and right now we are testing items that will not be used nationally in this national advertising and promotional until next year. Some of them will never be used because they are duds.

But those that go through the testing period and show a very unusual acceptance by the public, they become our tested item for the following year. So that when we move in with one of these traffic builders, we know that the consumers are going to go for it and go for it in a very substantial way. It brings new traffic into the merchant's place of business, it increases his sales in his place of business, and golly, it is just one of the greatest tie-ins ever developed in the tire business.

That is one of the biggest reasons why B. F. Goodrich are doing such an outstanding job and increasing their service station business.

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(2660) *By Mr. Barton:*

Q. Mr. Hoban, you have explained the merchandising program which the B. F. Goodrich Company has in connection with the sale of tires, batteries and accessories through service stations. Now I ask you what is the role which the Texas salesman, merchandising salesman, plays in implementing that program in Texas service stations?

A. Mr. Barton, I thought I had covered that pretty thoroughly but I will be glad to repeat it.

The B. F. Goodrich territory manager makes a sales presentation of the B. F. Goodrich franchise to a Texaco dealer. And if he is successful in signing that Texaco dealer up as a B. F. Goodrich dealer, the big job starts from there. In our way of thinking the only way we can be successful in merchandising tires is for the dealer to be able to put those tires on (2661) consumer's running wheels.

For us just to sell a dealer some times, and then stop at that point, is of little or no value to us at all.

So the Texaco merchandising salesman is a tremendous help to the B. F. Goodrich territory manager in showing our technique and the Texas Company's technique of merchandising, particularly showing him how to move tires and batteries, which are the major items in our line.

How to spot cars that come on to the court for possible new tire sales; how to trade tires, that I spoke to you about.

The Texaco merchandising man is in there so frequently he can be constantly drumming that into the B. F. Goodrich-Texaco dealer and he is just performing a wonderful service for us. In my book that is what we pay for. We pay for the service—and it is doggone near day in and day out because he is in there in many cases more than once a week, he is in many of those places more frquently than that, where our man only gets in there once a month or once every five or six weeks.

So the constant assistance in the application of the B. F. Goodrich merchandising programs by the Texaco dealer is where the Texaco salesman performs just a wonderful service for us.

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Redirect examination by Mr. Boyd:

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(2669) A. You get an account occasionally that has been a B. F. Goodrich account for many years, possibly an account that we have financed and built and so forth, and he decides to either change his gasoline suppliers or he is going into gasoline for the first time. We naturally recommend one of our good associates in the business and he takes on Texaco gasoline; possibly through a lease and re-lease arrangement.

(2670) When a situation of that kind develops the Texaco salesman finds here is a Texaco outlet selling B. F. Goodrich tires in large quantities and he reports that to the division manager of the Texas Company who immediately contacts the B. F. Goodrich district manager who says: "John Smith is now a Texaco-B. F. Goodrich dealer and should qualify for commissions."

Our district manager says: "Oh, no, that is an account which is a 20-year B. F. Goodrich account which we have financed and leveloped and doesn't qualify under our contract." He refuses to honor the account.

It stops for good reasons at that level and the two managers, the division manager of the Texas Company and the district manager refer it to the home office. That is what that means. We have some of those.

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(2671) (Witness excused.)

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(2689) Mr. Royall: Your Honor has overruled our motion for the names of people who have been contacted and not been called as witnesses. I saw a copy of the order this morning.

I want to say to your Honor that I have noted the ground on which you made that ruling. We will at a later

date, when the situation is changed, renew that matter in some other manner before your Honor.

Secondly, I want to say that we did not really intend the request for information from the witnesses who might be examined to be a motion, but it is of course immaterially, really, at this time. I am not seeking in any manner to reargue, but it is still our opinion that in the interest of expedition if the witnesses which are to be offered, other than company witnesses, would have available at the time of their examination data on the total sales 1952 to 1956, the TBA sales during that period, the number of TBA customers, the names of TBA customers who handle petroleum products, the brand name of each TBA product or if no brand name the name of (2690) the manufacturer, the TBA sales of each such product for this period 1952 to 1956, and also the territory of each salesman at present and any changes in the 1952-1956 period; and also to furnish a list of the records on which such information is based, and such records in the case of sales to include a list of all tax returns reporting such sale, either sales or otherwise, and we believe as the case proceeds it will be apparent that the lack of all or part of that information will certainly delay the examination of witnesses and may make it unnecessary to complete our cross-examination, which we very much hope we can avoid asking.

Your Honor, I assume that we may, if we so elect, note now or at any time during the hearing a formal exception to your Honor's rulings?

Hearing Examiner Kolb: You have an automatic exception.

Mr. Royall: I know we do. I just want to make it clear.

JAMES L. DOSS, was called as a witness on behalf of the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. State your full name for the record, please? (2691) A. James L. Doss.

Q. And your position with the Texaco Company? A. Since January 1, Regional Manager. Prior to that time Territorial Manager, Domestic Sales Department, Central Territory, Midwestern Area.

Q. Chicago is a— A. Chicago is the headquarters office; yes, sir.

Q. You say since January 1 you have been what? A. Since January 1, 1957 my title has been changed to Regional Manager. We have been undergoing a reqrganization of the domestic sales department. My duties from that date forward will be slightly different than prior to that time.

Q. Will you describe your duties prior to the January 1, 1957 date? A. The territorial manager is charged with the administration of the company's policies and programs as promulgated by the executive sales office in New York for the Midwestern area.

Q. How is that changed since January 1? A. Since January 1 we have transferred authorities held at territorial level down to the division managers. As a matter of fact, some of those authorities were transferred prior to January 1 but became complete on January 1, 1957.

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(2694) Q. You say you were a salesman at one time. What type salesman were you? A. Back in those days we called all the salesmen resale salesmen. We called on

all classes of business at that time. Of course, that has been many years ago.

Q. Have salesmen's duties changed now? A. They have to some extent, yes. We have merchandising salesmen today, and we have general salesmen today.

Q. Can you describe the duties of each? A. Our merchandising salesman calls only on resale accounts, that is, service station dealers. He works with those dealers in merchandising methods, sales promotion assistance, training, counsel, guidance, and so forth, in order to help them become more successful merchants.

Q. And the general salesman? A. He has similar duties involving having some resale accounts. That is, service station dealers in his assignment. But in addition thereto he probably calls on automobile dealers, farm implement dealers, and in some cases consuming accounts such as dairies, laundries, bakeries, et cetera.

Q. Is it true that the merchandising salesman calls on only lease accounts? A. No. He has some contract dealer accounts and some leased accounts. There probably would be cases where he had nothing other than leased accounts, but that is not a part of the (2695) position description.

Q. How about the general salesman? Does he have some lease accounts? A. Yes he does, in some areas—I would say in practically all areas he has some leased accounts.

Q. In your present position you have charge of local bulk plants? A. Yes we do.

Q. They are under your jurisdiction? A. Yes.

Q. How many bulk plants do you have in Chicago? A. We are speaking now of metropolitan Chicago?

Q. Yes. A. Well, we have a bulk plant at Des Plaines, one we call North Kingsbury, on the north side, which is near the north side of Chicago, one at Archer Avenue, and we have one at Joliet, which covers that area.

Q. Do you have one at Pullman? A. Yes, we do. I omitted that because it is only partially in operation. We are making most of the deliveries in that area from Joliet.

Q. Can you tell us—incidentally, these Texaco bulk plants, are they Texas owned or independents? A. The ones I mentioned are owned by Texaco.

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(2698) Q. Do each of these bulk plants have a sales force? A. Yes they do.

Q. How many salesmen are there in each? Does it vary? What type do you have? A. We have 21 merchandising salesmen and 16 general salesmen in the total area of metropolitan Chicago, which I described.

Q. They take care of all those bulk plants? A. Yes.

Q. Out of those bulk plants? A. Yes.

Q. That is not 21 and 16 each? That is total for the City? A. Twenty-one merchandising salesmen and 16 general salesmen covering the entire area which I described.

Q. Do they work out of those bulk plants or do they work out of the division office? A. They work out of the bulk plant.

Q. Who is in charge of salesmen at the bulk plants? A. A zone manager.

Q. What are his duties? A. He is responsible for all sales and operating matters, including credits, collections, and many other things that occur within the boundaries of his prescribed territory.

Q. Does he have anything to do with TBA sales? (2699) A. Yes he does. He also directs the activities of the salesmen and assists them and so forth.

Q. Who else at the home office has authority over the salesmen? What I mean is the division office. A. The division manager is, of course, in charge of all personnel.

—policy, programs, and everything else within his division, which usually comprises three or four states. He has a staff of assistants. And the one in charge of sales generally directs the activities of the general salesmen, and the one in charge of sales promotion works more closely with the merchandising salesmen.

Q. Who is that who works closely with the merchandising salesmen? A. The assistant division manager, sales promotion.

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(2700) *By Mr. Dias:*

Q. Are any of these salesmen assigned specifically to each of these bulk plants? Are they sort of generally working out of each bulk plant? It doesn't work that way? A. No. The merchandising salesman and general salesman cover prescribed geographic areas within the limits of a particular bulk plant. We have other salesmen that free lance, or other representatives. But not salesmen.

Q. You said they free lance. What does that mean?

(2701) A. What I mean is that we have men who are known as dealer service representatives, representatives dealer training, TBA representatives who more or less work out of the division office and might cover the entire area.

Q. What does the TBA representative do? A. He spends all of his time in the promotion of TBA, working with members of tire company organizations, working with our own salaried people and helping them become more proficient in assisting dealers. He holds little seminars from time to time with salesmen, keeping them up to date with TBA merchandising methods.

Q. What salesmen? A. Both general and merchandising salesmen.

Q. Is it at that time that they have meetings with station operators too, at these seminars? A. I don't think

the representative, TBA, himself would hold many meetings with dealers. There are probably occasions on which he would be in attendance. But he primarily works with our own salaried organization and members of the rubber companies.

He does make some calls on dealers from time to time, particularly if a problem arises.

(2702) Q. What sort of problem? A. Well, there could be some misunderstanding between the dealer and the rubber supplier regarding prices or quality or adjustments or credits; many other things.

Q. We asked you for a number of the Texaco outlets in Chicago. Do you have that? A. Yes, I have a memorandum on that. Unfortunately, our records do not make this information available for the years 1952 and 1953. I do have it for the years 1954, 1955, and 1956.

Q. This then is the number of Texaco outlets in Chicago during the years 1954, 1955, and 1956? Is that correct? A. The memorandum I have involves C, D, and E accounts. Of course we have some others that are not nominated.

Q. Suppose you give us the figures on that first? A. 1954, in the area which I described as metropolitan Chicago, we had 385 C accounts. In 1955, we had 386 C accounts. In 1956, we had 392 C accounts.

In the year 1954, in the same area described, we had 102 "D" accounts; 98 "D" accounts in 1955; and in the year 1956, 100 "D" accounts.

For each of those three years 1954, 1955 and 1956 we had three "E" accounts.

Q. You say you had others in addition to those nominated? A. There are probably ten percent of this total number that (2703) are not nominated to either Goodrich or Firestone for TBA solicitation.

Q. Just to be clear, taking 1956, there were 392 "C" accounts. You say ten percent. In other words, about 39 or 40 were not nominated to either Firestone or— A. Either company, probably 40 or 45.

Q. So that the total number of stations in the area would really be then 432, adding 40 to that 392 figure, is that correct? A. That would be pretty close; yes, sir.

Q. Is that true in each year and as to each classification? A. I would think so.

Q. It would probably be true of the "E" classification, wouldn't it? A. No. The "E" classification is a distributor. We have three each year and that is all we have.

Q. And there are no others? A. No.

Q. Nominated or otherwise? A. No.

Q. What is the reason why, or is there a reason why 40 in 1956, for example, were not nominated? What is the reason for not nominating the station? A. They would not be considered as potential merchandisers of TBA; possibly some garages, roadside service stations and (2704) small combination restaurants, service stations.

Q. How many of these—using the same figures for 1954, 1955 and 1956—how many were nominated to Goodrich? A. In the year 1954, 228. In 1955 there were 229. In 1956: 283 nominated to Goodrich.

Q. How many of those were approved by Goodrich? A. As far as I know they were all approved.

Q. How many were nominated to Firestone? A. 104 in the year 1954.

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(2705) *By Mr. Dias:*

Q. Will you state the number that were nominated to Firestone in 1954? A. Firestone in 1954: 104 accounts; 1955: 107; 1956: 136.

Q. How many were approved by Firestone? A. As far as I know all of them were approved.

Q. Do you know the difference between an active and inactive account? A. An inactive account is a non-buying account.

Q. This is in relation to TBA? A. Yes, sir.

Q. Isn't there a period during which if a station fails to buy it is classified as inactive? A. I don't know of any definite definition of that. I think each division probably has its own interpretation.

Q. My understanding is that after say a 90-day period if an account does not purchase it is considered inactive. Is that so? A. That could be true. I don't know.

Q. In other words, you don't know whether or not there is an arbitrary period? A. No, I do not.

(2706) Q. Do you know what happens when an account becomes inactive? A. Well, it would become inactive because a fellow was not buying.

Q. I didn't make that clear. What does the rubber company do when an account becomes inactive? Do they notify Texas? A. I don't believe there is any set procedure for them to notify us. Of course if the account is nominated to the rubber company and approved, and we receive information from them each month on the purchases of that account, we would know, too, that it was inactive or non-buying. I don't think they notify us.

Q. Let me start at the beginning. Do you recommend the purchase of Goodrich or Firestone to an operator? Is that correct? A. That is correct.

Q. Let us assume that the operator decides on Goodrich and no sale is made within some period—30, 60, 90 days. What happens to that particular station at that time? A. At that time if he hadn't been sold on Goodrich he might be nominated to the other company and give them an opportunity to try to sell them. If he hasn't bought

from Goodrich in 90 days I think he would have probably made up his mind to buy from somebody else. It could have been anybody.

Q. But at any rate you then nominate him to the other rubber (2707) company? A. I would think so. That would be the natural thing to do.

Q. Let us assume that a dealer buys either Goodrich or Firestone, say for about a year, and then stops buying. After a certain period if he stops buying the line that he had chosen originally is he then nominated to the other rubber company? A. If he should stop buying Goodrich after a period of a year he would have already selected some other line. That would have been the reason he stopped buying. There wouldn't be any point—

Q. Though that doesn't follow. Let's suppose he goes along for a year buying Goodrich products and for some reason best known to him he decides he is not going to buy them anymore. Do you or do you not receive notification from Goodrich that he is not buying Goodrich products? A. I don't think so.

Q. But you did say that you get these accounts or records—is it monthly that you receive notification as to the amount of purchases— A. Yes, sir.

Q. (continuing)—by individual stations? You would know from those records that he was not buying? A. That is correct.

Q. What is the Texaco procedure then if they notice that (2708) a station is not buying the sponsored brand? A. In other words, the division office, as I understand your question, would develop the fact the man was not buying because we had had no report on him. While there isn't any set procedure for them to notify the field, they sometimes might verbally or might comment on it to the zone manager. The salesman would probably know about it. I don't know just what they would do.

Q. On these figures that you gave, are all of them active with the respective rubber companies? A. Most of them are, I believe. These are nominated and approved by.

Q. Of those figures, referring to Goodrich, in 1954, 228 nominated, all were approved; 1955, 229 were nominated, all were approved; 1956, 283 nominated, all approved. As of 1956 are all these 283 accounts active? A. Yes, sir. I hope I didn't answer your question incorrectly. We didn't nominate this number each year. This is the total nominated and approved for each of the years.

Q. And it is just cumulative? Is that the idea? A. Yes.

Q. I think there was a misunderstanding there. Is the same true as to Firestone? In 1956 a total of 136 that had been nominated to Firestone and had been approved, and they are all active, is that correct? (2709) A. Yes, sir.

Q. Do you keep your records separately as to those stations that buy Goodrich and those that buy Firestone TBA? A. We have an individual record on each station, yes.

Q. Then as the stations break down into Goodrich purchases or Firestone purchases, are they kept separately? A. Yes, they are.

Q. On these stations that are buying the Goodrich line, taking 1956, do your records show those that buy tires and tubes, a breakdown as to batteries and another breakdown as to accessories? A No. We have a total sum for tires, batteries, accessories, and all TBA merchandise.

Q. Do you mean a dollar sum? A. We have the number of accounts and we have also the wholesale dollar purchases.

Q. In other words, the number of Texaco outlets buying tires, batteries, and/or accessories is 283 as of 1956?

A. That was the nomination, sir. They were not all buying. Some buy at some times and some don't.

Q. But you told me they were all approved? A. They were all nominated to and approved by. But that doesn't mean that each and every one of the accounts is buying.

Q. You told me they were all active? (2710) A. Then I made a mistake if I said that.

Q. What is the answer to that then? Are there some inactive? A. In the case of Goodrich, in the year 1954, 193 accounts were buying Goodrich and other products. And of course there were a total of 228 nominated and approved.

In the year 1955, 210 accounts were buying Goodrich and other TBA merchandise, out of 229 nominated and approved.

In the year 1956, 202 Goodrich accounts were buying Goodrich and other TBA merchandise out of 283 nominated and approved.

Q. Then your answer is changed to the extent that all were not active during those particular years, is that correct? A. That is correct; yes, sir.

Q. Can you give me the same information for Firestone? A. Yes, I can on Firestone.

In the year 1954, 61 accounts were buying Firestone and other TBA merchandise out of 104 nominated and approved.

In 1955, 55 accounts were buying out of 107 nominated and approved.

In 1956, 54 accounts were buying Firestone and other TBA out of 136 approved.

We had also in 1954, 19 accounts buying both Goodrich and Firestone and other TBA.

(2711) Q. Would they be 19 out of that 193? Or would they be 19 out of the remainder between the difference of 228 and 193? In other words, my question is: Is

this 19 in addition to the 193 you already mentioned above? A. That is correct.

In 1955 we had 30 buying both lines, and 35 buying both lines in 1956. We also had, in addition to the figures I gave you, nine buying Goodrich only in 1954, eleven buying Goodrich only in 1955, and fifteen buying Goodrich only in 1956.

Q. Tell me again, what are those figures? Are they of a different classification? A. No. These are dealers out of this total number I gave you nominated and approved. For example, in 1956 we had 283 dealers nominated to and approved by Goodrich.

Q. Maybe this is where I am off. Of those 283, are they "C" dealers? Is that correct? A. No, that is all dealers.

Q. Then I don't understand what these nine, eleven, and fifteen are. A. The nine, eleven, and fifteen are buying Goodrich products only. The other figures I gave you, as I mentioned, are buying Goodrich and other TBA. And in the year 1954 we had only two dealers buying Firestone exclusively, the same number for the years 1955 and 1956.

(2712) Q. That was two? A. Two buying exclusively. All those others were buying other lines of TBA in addition to either Firestone or Goodrich.

Then we had 13 dealers in 1954, 16 in 1955, also 16 in 1956, where the buying habits were not determinable at the time this information was compiled. It is a little doubtful as to just how they were buying. The point is that we tried to break this down in detail here to give you full information.

* * *

(2714) *By Mr. Dias:*

Q. What type assistance does this division or zone here in Chicago render to rubber companies in selling TBA? A. Our people of course work primarily with the service sta-

tion dealer in convincing him that he should handle TBA merchandise. We recommend Firestone and/or Goodrich. Of course, he is free to select anything of his own choice.

Q. Which of your people, specifically, do that? Is it just the merchandising salesman? A. The merchandising salesman, the general salesman, sometimes the TBA representative is called into the picture. And the zone manager sometimes.

Q. Does Texas conduct meetings with station operators? A. Yes.

Q. And the purpose of those meetings? A. It is to make them more successful merchants.

(2715) Q. And at that time do they discuss the promotion of TBA? A. Yes.

Q. Do you ever have representatives of Goodrich or Firestone at those meetings? A. There are representatives of both companies from time to time at some of the larger dealer meetings.

Q. Simultaneously? A. Yes. Usually in the spring of the year we have a large dealer meeting and generally a representative from those companies is present. Not always. But we display merchandise.

Q. Do you have those meetings at which only one or the other attend—Goodrich or Firestone? A. To the exclusion of the other?

Q. Yes. A. Oh, no.

Q. In other words, every time you have a station operators' meeting, representatives from both rubber companies are present? A. They are always invited, sure. I mean as a standing invitation. Our meetings are not closed. They can come to any of them.

Q. As further assistance to the rubber companies, do you or do you not advise Goodrich or Firestone that a new station is opening or a new operator is taking over a station? A. Well, the procedure generally works something

like this: (2716) In the selection of a replacement dealer or new dealer the salesman goes over it with him.

Q. With whom? A. The dealer, the prospective dealer.

Q. The operator? A. Yes, that's right. All the phases of successful merchandising, of which there are many, and talks to him about the importance of TBA. And if the salesman decides upon Goodrich or Firestone, that company is notified, yes. As a matter of fact, in most cases a letter is written to both companies notifying them that a new station is going up. Sometimes before the dealer is ever selected or even interviewed. So that they both know that the station is going to be available.

Q. Do you also contact the new operator? Having chosen a new operator, do you contact him before or after he gets into the station with this rubber representative? A. Well, he—it would depend, sir. The dealer may have selected the TBA line he chooses to sell before the station opens. But often times he doesn't until after he has taken the station and the rubber company representative convinces him that he has a good line of merchandise.

Q. Isn't it true that it happens very often that a Texas representative, in company with one of the rubber company representatives, calls on the prospective station operator at his home? (2717) A. That does happen sometimes.

Q. Before he even opens his station, isn't that true? A. I wouldn't say he called on him every time, but I would think it does happen. A dealer would want to know more in detail, for example, about the quality of the merchandise and pricing and so forth which our salesman might not be completely familiar with. We have a lot of new salesmen sometimes that need help like that.

Q. You mean the representative from the rubber company? A. Yes, that's right.

Q. So it does happen that after a dealer has chosen his TBA supplier before he opens his door to the station, is that correct? A. Well, I wouldn't say that happens any more often than it does later.

Q. But it does happen? A. It does happen.

Q. You mentioned notification by mail to the rubber companies that there are new stations in the process of building or intending to be opened. Is that correct? A. That happens in some areas. I know it happens here in Chicago.

Q. Does it also happen that you notify the Goodrich and Firestone distributors that there is a new station or a new operator about to take over a station? Let me change that.

(2718) You have stated that you notified the Goodrich Company and Firestone that there are these anticipated openings. Isn't it true that you also notify the local distributors for those companies? A. Well, that might happen if—are you talking about a distributor of Firestone or a distributor—

Q. Or a distributor of Goodrich merchandise. A. Goodrich merchandise?

Q. Yes. A. Sometimes those distributors are supply sources for a dealer. I don't know that that happens. It might.

Q. As a matter of fact, back in about October and November, didn't a letter issue from your office to each of the designated supply points for Goodrich and Firestone products notifying them that there were, as I recall, five or a half dozen new stations about to open up and inviting them to go see the operators? Isn't that so? A. A letter from my office?

Q. I believe that is right, yes. A. Do you mean over my signature?

Q. I don't know if it was over your signature or not. A. I don't recall that.

Q. Is that a general practice? A. I wouldn't know. That is an odd—you said five stations were going to open here in Chicago?

(2719) Q. Yes. Either a change in operators or a new station opening up. A. I know it is the practice of the zone manager here in Chicago when a new station is going to be built to notify the Firestone and Goodrich people. I know that. That is about all I know on that.

Q. They do that by mail. Do they also do that by 'phone? A. It could happen. I don't know that they do.

* * *

(2721) *By Mr. Dias:*

Q. Do you ever conduct sales meetings with the salesmen? Do you do that or is there somebody else in the organization who does that? A. I would not personally conduct sales meetings with salesmen. I might attend one as an observer.

Q. Who normally does conduct those sales meetings? A. Either the division manager, the zone manager, or one of the division manager staff assistants.

(2722) Q. How often are those sales meetings held with the salesmen? A. In the case of the division manager and/or his staff assistants those meetings would not be held more than once or twice a year. The zone manager might have a meeting with his salesmen weekly or monthly.

* * *

Cross examination by Mr. Royall:

(2723) Q. I will start by having you go back to some records. Mr. Doss, there are about 4,000 service stations, are there not, or a little more, in the Chicago District about which you are speaking? A. Something more than that.

Mr. Dias: I object.

Hearing Examiner Kolb: Overruled.

By Mr. Royall:

Q. As I understand the figures that you got up for Mr. Dias and gave, in the case of Goodrich you nominated, taking the year 1956 as illustrative, 392 accounts, C accounts, and 100 D accounts, and 3 E accounts. Is that what you meant, that you nominated those? A. Those are the total numbers of accounts nominated to the rubber company.

Q. Aren't those the total accounts instead of the total nominated? Isn't that the number of your entire Texas outlets in that area? A. That's right.

Q. Those figures do not relate to either Goodrich or Firestone, do they? A. No. The number nominated, I read that out specifically, the number nominated to and approved by Firestone in 1956 are 136; Goodrich, 283.

Q. I am taking the Goodrich figures. So you have in (2724) Chicago all your accounts totalled in 1956—392, plus 100, plus 3, which is 495 accounts. A. We have accounts in addition to those that are not classified as anything.

Q. But those are the ones that are classified C, D, and E? A. That's right.

Q. Out of that 495 you nominated and the nomination was approved in the case of Goodrich for 283 account? A. Yes.

Q. And in the case of Firestone, 136 accounts? A. Yes.

Q. Those would add up to 419? A. That is correct.

Q. As compared with the total number of stations of 495? A. That's right.

Q. That 419 I believe you testified has some duplication because in some of the stations both Firestone and Goodrich are nominated. Is that right? A. That's right.

Q. Do you know about how many that is? A. No, I don't. I know how many are buying both products but I don't know that.

Q. Therefore the number nominated and approved, which came to— A. I do know that some accounts are nominated to both (2725) companies.

Q. I understand that. And the number of 419 nominated accounts would be reduced by whatever— A. Whatever the duplication was.

Q. (continuing)—the duplication was? A. Yes.

* * *

By Mr. Royall:

Q. You said the buying habits, I believe you said, were not determined as to 16? A. Oh, yes. That is correct.

Q. I just wanted to be sure I understood you. Of those accounts, Goodrich accounts, 283 were nominated and approved, am I correct in saying that your testimony was that out of that entire number there were only 15 which sold Goodrich sponsored goods alone? A. During the year 1956 only 15 handled Goodrich exclusively.

Q. Out of the 283? A. That is right.

(2726) Q. Does that mean that the others all sold either no Goodrich or sold Goodrich and some other non-sponsored items?

Mr. Dias: I object.

Hearing Examiner Kolb: Objection overruled.

A. Yes, sir.

By Mr. Royall:

Q. In the case of Firestone, you testified that there were 136 stations nominated and approved. Is that right? A. In the year 1956; yes, sir.

Q. And of those stations, the 136, there are only two that sold Firestone-sponsored goods exclusively? A. Yes, sir.

Q. Out of the whole 136? A. Yes, sir.

Q. All of the others either sold no Firestone-sponsored goods or sold other competitive non-sponsored goods, is that right? A. That is right.

Q. They either sold no Firestone or they sold Firestone and other non-sponsored goods? A. That is right.

Q. As a matter of fact, some of them didn't even sell, even though they were nominated and approved, any Goodrich or Firestone? A. That is right.

* * *

(2728) Q. I believe you testified in answer to Mr. Dias' questions that you were in charge of the various territories which you described, from time to time. And I believe you testified that the policy matters were your decision, is that correct? A. Yes, sir.

Q. Who made the choice as to whether a dealer would use a sponsored TBA product or whether he would use one of those two if he used either? A. That would be up to the dealer to make his own choice.

Q. I believe in one part of your testimony—and my recollection may be incorrect—you inadvertently used the (2729) word "salesmen" when you meant dealer. Did you say or intend to say that the salesmen ever made that selection? A. The salesman only recommends to the dealer, and the dealer makes his choice.

Q. During the time that you were in charge of the policy arrangements in connection with the petroleum and the TBA program, were instructions sent from time to time to the salesmen as to your policies? A. Yes, sir.

Q. Were they sent out in accordance with or under your authorization and your knowledge? A. Yes, sir.

Q. Did those letters say that the dealer was independent and made the selection? A. Certainly.

Mr. Dias: I object. Do you have the letter?

Hearing Examiner Kolb: Objection sustained. The answer will be stricken.

By Mr. Royall:

Q. Was there anything in those letters inconsistent with the policies that you just stated? A. No, sir.

Q. Will you note this letter. Was this letter that I hand you sent to the salesmen in this territory, the letter dated January 14, 1952? (2730) A. I believe this is the Denver letter.

Q. Was one similar to that sent to your— A. Yes, sir. All those letters of policy emanate in New York, come to the territory manager. He gives them to the division manager and he gives those same instructions to the field.

Mr. Dias: Is that letter in the record?

Mr. Royall: No, sir. I will have it identified.

By Mr. Royall:

Q. With that letter was there enclosed a circular letter dated January 3, 1952? A. That is right; a statement of policy.

Q. And that is referred to in the other letter? A. Yes, sir.

Q. I asked you a moment ago about a letter sent to Denver. Was a similar letter sent from the Chicago office on January 21, 1952 to the resale salesmen? A. That's right.

Mr. Royall: I would like that identified.

Hearing Examiner Kolb: The document will be identified as a document dated January 2, 1952, and marked 9-A through C.

(The document referred to was marked Respondents' Exhibit 9-A through C for identification.)

(2731) *By Mr. Royall:*

Q. Another letter was sent out of similar character, was it not, dated December 29, 1953, and this thereupon was superseded, is that right? A. That is right. We restated the policy.

Mr. Royall: Your Honor, if I may state this for the record, the letter sent out in 1953 has already been put in evidence in the Washington hearing.

Mr. Dias: What is the exhibit?

Mr. Kerins: 2-A through E.

By Mr. Royall:

Q. Is this a letter containing similar instructions relating to the independence and choice of the dealer dated December 20, 1955 and sent to both merchandising salesmen and general salesmen? A. That is right.

Q. And it has attached thereto a statement of the policy? A. Yes, sir.

Mr. Royall: I would like that identified.

Hearing Examiner Kolb: Mark it as Respondents' Exhibit 10-A through C.

(The document referred to was marked Respondents' Exhibit 10-A through C for identification.)

* * *

(2732) *Redirect examination by Mr. Dias:*

Q. I am confused about some of the figures you gave earlier. I think you testified one way and then changed it. A. It wasn't intended.

Q. I understand. I would like to get the record clear because I am confused and maybe the record is, too.

Using the year 1956, 283 accounts nominated to Goodrich? A. And approved.

Q. In 1956, 202 accounts were buying B. F. Goodrich—they were the active ones. Is that correct? Are my figures correct so far? A. They were buying Goodrich and other merchandise.

Q. Yes, I understood that. Then you gave for Firestone in 1956, 136 nominated and approved and 54 active accounts. A. Fifty-four accounts buying Firestone and other merchandise.

Q. Then you said—and here is where I may be confused—you gave the figure of 35 stations in 1956 also buying both, and at that time I asked you if that was in addition to the figures you had already given. And on cross-examination I think you stated that the 35 was included among those two prior figures. Which is correct? (2733) A. It would be included in the 136 for Firestone and 283 for Goodrich. The division between the two I do not know, but that would be a duplication.

Q. That is what I want to get clear. The duplication would come in that 136 and 283 figure, rather than in the 202 and 54 figure. Is that correct? A. That is right.

Q. You also stated that of the 202 purchasing Goodrich TBA, only 15 purchased exclusively. Is that correct? A. That is right.

Q. And of the 54 purchasing Firestone, only two bought exclusively, and those figures were for the year 1956. Do you know, or can you find out for me, how many of the

remainder of those two figures—202 and 54, Goodrich and Firestone respectively—were buying tires and/or batteries? A. Let me see if I understand you correctly.

Q. Let me restate it. Of the 202 you took out 15 because they were the only ones buying exclusively. That would leave roughly 187. Is that correct for Goodrich?

Mr. Royall: I think you misunderstood. The 202 he stated were buying non-sponsored goods.

Mr. Dias: And also buying Goodrich.

Mr. Royall: And also buying Goodrich. But the 15 were the ones buying Goodrich only, so they are not a part of the 202. I thought your questioning inferred they were.

(2734) Mr. Dias: Yes.

By Mr. Dias:

Q. Then in other words there are 202 buying Goodrich and other products, is that correct? A. That is correct.

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(2735) *By Mr. Dias:*

Q. Of those 202 Goodrich accounts that you stated were buying Goodrich and other products, how do you know that they are buying other unsponsored products? A. In developing this information which you desired it seemed appropriate to develop the complete details on the accounts, and that was the occasion for this.

Q. Are those records normally kept? In other words, do you normally get a report showing that a station is buying Goodrich or Firestone and other merchandise? A. No.

Q. That was compiled for the purposes of this— A. We have no reports of that character at all. This was developed in connection with this request in order that it would be clarified.

Q. Is there any report ever made by anybody—salesman or station operators—that they buy other products, other TBA products other than the sponsored brand? A. No.

Q. How did you compile this information then that these 202 were buying other than the sponsored brands? A. By physical survey.

• • •

(2738) DONALD J. KNIGHT was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name for the record? A. Donald J. Knight.

• • •

Q. Will you state your official position with the Texas Company? A. Zone Manager.

Q. How long have you been zone manager, Mr. Knight? A. Approximately six years.

Q. Will you describe your duties as zone manager? A. To promote the interests of the Texas Company through the development of new business, protect their present (2739) investment and interests in a defined territory.

Q. Do you promote the sales of TBA, too? A. Through my salesmen assigned to me.

Q. How many salesmen do you have assigned to you? A. Four.

Q. Are they general or merchandising salesmen? A. Both.

• • •

Q. Do you have charge of one of the bulk plants? A. Yes, sir.

Q. Which one? A. DesPlaines.

Q. You heard the description of the territory described by Mr. Doss. Was that accurate? A. The north and west section of metropolitan Chicago.

Q. Do you have salesmen's meetings? A. Yes, sir.

(2740) Q. How often? A. Weekly.

Q. What is the purpose of these salesmen's meetings? A. To review policies, to handle correspondence which arrived during the past week, and to assign the salesmen to specific duties.

(2741) Q. Are your salesmen called in for meetings by higher echelons at times? A. Yes, they would be. Usually on an annual basis we have an organization meeting.

Q. Do you maintain a performance record for your salesmen? A. Would you define "performance"?

Q. Yes. First of all, are your salesmen on a salary or commission basis? A. They are on a salary and bonus basis.

Q. How do you determine that a salesman has earned a bonus? A. The bonus is paid on the lubricating products only, and that is paid on the basis of previous year's sales.

Q. In other words, if it is exceeded— A. If they exceed the previous year's sales, yes.

Q. The bonus or added extra compensation is not payable on petroleum sales? A. On lubricating products. Grease and motor oils. Not gas.

Q. These salesmen promote the sales of TBA? A. Yes.

Q. How does that figure in their performance? A. There is an objective established, based on the previous year's sales.

Q. What is that objective? You say it is based on previous year's sales. To the individual station in there? A. No. As a whole.

(2742) Q. Do you mean as a whole for the particular bulk plant or territory? A. Correct.

Q. Let me see if I understand now. Let's assume that the stations in the territory of your bulk plant purchased $100 worth of TBA last year. That takes care of all four salesmen, is that correct? In other words, all four salesmen sold or promoted the sale of $100 worth of TBA. A. I don't follow your question.

Q. You state that the objective is to sell as much TBA, or promote the sale of as much TBA during the current year as they sold in the preceding year. A. Correct.

Q. From the whole bulk plant or the territory of the whole bulk plant. Is that your testimony? A. The four salesmen would have individual objectives.

Q. That is what I want to be clear. Each salesman then has the objective of matching at least his prior year's TBA sales, his own rather than the whole bulk plant's, is that correct? A. Correct.

Q. How do you determine whether or not he has made those sales? Do you receive reports? A. We receive a report from the division office as to the dollar volume.

Q. Is he supposed to increase or maintain his prior year's (2743) business? A. Maintain and increase.

Q. So it is continuously rising year after year? A. No. I would not say it is continually rising, because sometimes our volume is below what it was the previous year. We do not equal our figures. Our figures are not always plus figures.

Q. What is the situation then where a salesman does not equal his previous year's performance? Is he considered a good salesman? A. There are factors taken into consideration there. It might be a loss of some business which might have an effect on there which is beyond his control.

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Q. When you say loss of business, do you mean stations going out of business? A. A station going out of business; changing product.

Q. If the station does not go out of business, if he has as many stations in his area from one year to the next and his sales dropped down, what is the situation then? A. Well, there are factors entering into that. It may be a reduction on a national basis of sales of tires, batteries or accessories, which might be a factor to cause that, and it also could be a factor where the salesman was lax due to sickness or—

Q. At any rate, his performance is based upon his sale of (2744) petroleum products, sales of lubricating products, lubricating to the extent that he receives a bonus on the part which exceeds last year's sales, and also sale of TBA products. A. There is no bonus on TBA products.

Q. But that is one of the rating factors? A. One of the measuring factors.

Q. You have heard the testimony of stations in the territory purchasing other than sponsored-brand TBA. Do they figure in that salesman's rating? A. We have no record of the outside purchases.

Q. What is the procedure when a salesman does not meet the standards that you expect of him? A. That covers a broad range of factors.

Q. There is nothing different between one of your salesmen and a general salesman is there? You encourage him to sell more of whatever it is that he is lax in, is that correct? A. Correct.

Q. So that if his sales were down in either petroleum or lubrications, or TBA, you would encourage him to sell more? A. That's right.

Q. Do you have anything to do with the closing down of the station, of a leased station, or the recommending of a closing down of a station? A. Yes.

Q. What sort of authority do you have in that regard? (2745) A. I have authority in recommending only. I have no authority to cancel leases.

Q. Where do you get your information as to whether or not a lease should be continued or be allowed to lapse? A. From the sales figures, from the cost per gallon.

Q. Do you receive recommendations from your salesmen? A. No. The salesmen do not recommend that. Their work is not of that category.

Q. I am talking of merchandising and general salesmen. Neither can recommend? A. The original recommendations start with me.

Q. And the only time that you have any indication that a station may need cancellation for one thing or another, is from your own records, the records in your office, is that correct? A. The division office has similar records. The forms originate in the division office and are sent to the field and I inspect those records.

Q. Do you also inspect the stations from time to time? A. Yes, sir.

Q. How often do you do that? A. I would say that I probably cover all the stations once every six months.

Q. Do you have any idea how many are in your particular territory? A. Approximately 75. Retail service stations?

(2746) Q. Yes. A. Yes.

Q. When you check those stations what is the purpose of your visit? Do you check the housekeeping? A. The physical aspects of the service station.

Q. Anything else? A. I might look to see if the premises are clean, if there is any repair work that is needed, if the lights were in proper working order. A physical inspection of the station. Cleanliness, proper maintenance operations.

Q. When a station needs repairs do you recommend that those repairs be made? Does Texas do it? A. Texas may in some instances, and the lessor, that may be his obligation to do that.

Q. When you come upon a station that has a poor sales record, what do you do in a situation of that sort? A. Endeavor to analyze the situation so that we can make recommendations to the dealer to assist him to better sales, better profits.

Q. And that is regardless of whether the sales are on petroleum, lubricating oils and grease, or TBA? A. In line with the petroleum sales.

Q. You don't encourage the purchase of TBA products? A. Yes.

Q. Then if his present figures are lower than they were last (2747) year, you don't try to encourage him to pick them up?

Mr. Royall: Your Honor, we object to cross-examining the witness. The witness said the determination is made entirely on petroleum sales. Now he is trying to cross-examine him on it. We suggest non-leading questions.

Mr. Dias: A hostile witness.

Hearing Examiner Kolb: I think the witness is an adverse witness. You may answer. Will you read the question?

(Question read.)

A. Yes, I do encourage him to pick them up.

By Mr. Dias:

Q. So that on the occasion of your visits to these various stations, you do try to improve his purchases and sales of petroleum, lubricating oils and grease, and TBA products, is that correct? A. If there were factors that entered

into it that he needed some assistance or recommendations on those three items, yes.

Q. On your visits to these dealers do you ever reproduce or present to them these policy letters of the Texas Company? A. No, sir.

Mr. Dias: That is all.

Cross examination by Mr. Royall:

Q. Do you discuss the policy with them? A. Yes, sir.

(2748) Q. And are the policies you discuss the same as come from the home office and also contained in these letters which are sent to dealers? A. Yes, sir.

Q. Not to dealers but to salesmen. A. To salesmen.

Q. Do your recommendations and discussions vary from those policies as stated by the home office and in the letters from the division and zone headquarters? A. If I understand your question, I follow the policy.

Q. I believe you stated that no bonus is paid for TBA sales. A. Correct.

Q. Am I correct in my understanding that in determination of the question of cancellation or renewal, the determining factor is the gasoline sales? Is that correct? Policy sales? A. Yes, sir.

Q. In your experience has there been any failure to renew, or any cancellation based in any way on the lower amount of TBA sales? A. No.

* * *

(2749) Q. During the period from the time that you were salesman to when you were zone manager were you fully familiar with the policies of the Texas Company as to the independence of the dealers? A. Yes, sir.

Q. Did you follow that policy in the administration of the affairs of the company? A. I have.

Mr. Royall: That is all.

Redirect examination by Mr. Dias:

Q. You mentioned that you discussed those company policies with station operators. How often did you do that? Every time you would go around? A. No, I do not.

Q. Can you give us some idea? Do you renew statements to them about the company doesn't want you to do this, that, or the other? A. If the occasion arose, yes.

Q. How would the occasion arise with regard to TBA, let's say? A. Do you mean what would bring about my discussing the policy of the company with an operator regarding the sale of tires, batteries and accessories?

(2750) Q. Yes. A. Possibly it would be the lack of gasoline sales due to his not properly displaying tires, batteries and accessories or not giving that service to his customers.

Q. What about the brand of TBA? A. Nothing as to the brand.

Q. You don't go into that at all? A. He is an independent operator. I would recommend to him, yes, that he call on Goodrich for assistance to help promote, or some other concern, whatever it might be.

If he had tires there, we would suggest that he display those tires, possibly run a promotion on them.

Q. From your statement, I take it if he sells more TBA he will sell more petroleum. Is that what you said? A. The offering of the service, tire service, sale of tires, battery service, sale of batteries, we feel will enable him to sell more gasoline.

Q. You mentioned that leases were never cancelled, that Texas never failed to renew because of low TBA sales, Has Texas Company, those stations in your area that you are familiar with, have they ever been cancelled out because of poor housekeeping? A. That could be one of the factors.

Q. Hours of operation? A. That could enter into it.

(2751) Q. Can you mention some other reasons for cancelling? A. Unsatisfactory finances to operate the service station, issuing bad checks to us, acts which would hinder other Texaco dealers. By that I mean discourtesy to the trade, obscene language, conditions of filth.

Q. How about leaving the station closed for any given period of time? Don't you have a provision in your lease about hours of operation? A. No, sir.

Q. Pardon? A. No, sir.

Q. Isn't there a provision in there that stations shall not be closed for 24 hours, 48, or something of that sort? A. I think that there is a provision in there that the station must not be closed down.

Q. What is that period? A. I do not have a copy of that lease with me.

Q. May I suggest 72 hours? Does that sound familiar? A. I will not answer that question without a copy of the lease.

Mr. Royall: The lease I believe, your Honor, is in evidence.

By Mr. Dias:

Q. Have leases been cancelled or have you failed to renew leases for violation of that type thing? (2752) A. I have had no instance where an operator closes up for a day or two days and would reopen the station. I have had cases where the operator closed the service station and said, "I can no longer operate."

Q. How about hours of operation? Do you require 24 hours a day operation? A. No, sir. We require no hours.

Q. Have you ever? A. No, sir.

Q. Of no lessee in your area? A. No, sir.

Q. After your survey, when you determine that a lease for some reasons best known to yourself should be cancelled or not renewed, do you notify the lessee, the operator, that such action is being contemplated? A. We usually discuss that with the operator, yes.

Q. When do you discuss that with him? Before you notify him that he is out? A. Prior to that time. We always counsel the operator, encourage them, try to get them to be better business people.

Q. Do you give them a period of probation, so to speak? A. No, I do not put them on probation.

Q. In other words, you talk to them about it and then cancel him? A. No. They are given an opportunity to correct those things (2753) which we have discussed with him and which we feel are poor business practices. After a period of working with him through the salesman and myself, if we find that our efforts are of no avail, at the expiration of the lease it is possible that we may have to decide that this is the wrong operator for this operation. Then he is given notice of perhaps 30 days' notice—

Q. You give him a 30-day notice that his lease will be cancelled. Before you give him that notice you tell him what is wrong and he has a period to correct that deficiency. A. We recommend certain things to correct the condition, and encourage him and work with him to help him do it.

Mr. Dias: That is all.

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(2754) *Redirect examination by Mr. Dias:*

Q. Is there any difference in your mind between a cancellation and a failure to renew a lease? A. A cancellation and failure to renew?

Q. Yes. A. Are you talking of cancelling an operator out and the failure to renew a lease on a piece of land and building?

Q. No. You have an operator in a station. He has let's say a one-year lease. You talk about cancellation, that you only know of two in the past 12 months. Were those two cancelled at the end of that 12 month period or sometime before the end of that 12-month period? A. They were cancelled at the expiration of their lease.

Q. Is there any difference between a cancellation and just a failure to renew? In other words, failure to renew their lease? A. They all fall into the classification to fail to renew their lease. We cancel no lease other than at the expiration.

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(2757) ARNE L. CARLSON was called as a witness for the Commission and first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name for the record? A. Arne L. Carlson.

Q. And your position with the Goodrich Company? A. As of January 1, this year, District Manager. Prior to that time, General Supervisor.

Q. General supervisor? A. That is right.

Q. How long were you general supervisor? A. Since June 1953.

Q. Will you describe your duties as general supervisor? A. As general supervisor I was indirectly responsible for the development of wholesale business, TBA-wise, through our independent dealers reporting to the district manager.

Q. And now as district manager? A. It becomes a direct responsibility.

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(2760) Mr. Royall: And the same is true as to any other oil company mentioned in connection with Goodrich. May we have that understood, too, sir, the same objection?

Hearing Examiner Kolb: You have a standing objection to all the questions relating to other oil companies other than Texas, and other suppliers other than Goodrich.

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(2761) *By Mr. Dias:*

Q. Will you explain what that column under the title "Continental" is? A. The "X" there indicates that the distributor is servicing an account handling Continental petroleum products. The numerals likewise indicate the number of such outlets that this distributor services.

Q. What is meant by the column "Others"? A. That could be garages, stores, or some type retail outlet that handles some other type petroleum product than is shown in the other four columns.

Q. Using as an example the Builtmore Tire Company, this indicates that they sell or that they are a supply point for 82 Texas stations, 11 Continental stations, and also serve as a supply point for others, maybe another oil company? A. Could be.

Q. Does this list indicate that every Goodrich distributor, (2762) with the exception of the Wholesale Oil Company and the B. F. Goodrich store at 6215 Cottage Grove Avenue, is a designated supply point for one or more Texaco stations? Is that what that indicates? A. It indicates that they are now servicing some Texas outlets. In fact, the way a supply point becomes designated is by the dealer, the service station outlet making a purchase, and then the distributor thereby becomes a supply point.

According to our records today those stores with the "X" were distributors now servicing and supplying outlets as indicated.

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By Mr. Dias:

Q. In connection with that list of distributors, Mr. Carlson, will you explain exactly how those stores operate in connection with their supplying duties in connection with the indicated oil companies? (2763) A. Just how do they operate? Is that your question?

Q. Yes. A distributor is designated and the Texas stations that are indicated by those numerals purchase from that distributor. Is that correct? A. No. The dealer designates his own supply point. He might have one or he might have a half dozen different supply points.

Q. Which dealer? A. The Texas dealer, or any dealer.

Q. He designates his own supplier? A. We make available to an associate dealer, as we refer to them, supply points that are available to them that are set up to serve them, and then it is the choice of the dealer as to what supply point he prefers, or a group of supply points.

Q. Those numerals after the indicated distribution point, if you were to total all those numerals would that give you the total number of Texaco stations, or do they overlap in some instances? A. They overlap in some cases, because one dealer might be serviced by, like I say, two or more distributors.

Q. How long has that been in effect, Mr. Carlson? Has that always been the case? A. Your question is how long has it been in effect that two or more might supply?

(2764) Q. That is right. A. It has been in effect ever since I have had any responsibility with wholesalers, and prior to that time I couldn't answer how long prior to that.

Q. How much experience have you had along that line? A. Since June 1953.

Q. It is my understanding that the Goodrich Company designated a supply point? A. We tell them our nearest supply point. As an example, it would be normal to assume that a dealer would choose the supply point near to him. However, that is not always true. We have a case where a dealer at approximately 4600 North Chicago is being supplied by a distributor which is 6800 South, and we do have distributors between the present supplying distributor and the dealer.

Q. Are you familiar with this TBA program, Mr. Carlson? A. I believe I am.

Q. Are you responsible for the promotion of the TBA to petroleum companies? A. That is part of my responsibility.

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(2765) *By Mr. Dias:*

Q. Will you tell us what Commission Exhibit 143 is, Mr. Carlson? A. This is referred to as the TBA Inventory Guide which we make available to any dealer, whether it be a petroleum dealer or some other type dealer.

Q. Is that the current issue that is now in effect? A. Yes, sir. It is the last one I have seen.

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(2767) *By Mr. Dias:*

Q. From your opportunity to glance through it, can you tell us whether or not that includes all items in the automotive accessories line that are included in the TBA program? A. It would certainly include the majority of them. I would be of the opinion that it would cover all of them.

Q. What about such items as repair parts, cash rate or parts. Does Goodrich sell those items? A. No, sir.

Q. How about mufflers and shock absorbers? A. We do not.

Q. How about service station equipment and supplies. Do you handle that? A. We have available some service station equipment such as battery chargers. That is about it. Tire spreaders we do not have available; larger tire equipment, pieces of equipment we do not have available that we can sell direct to the dealer.

Q. Do they come within the TBA program, sales to petroleum companies? A. Equipment?

Q. Yes. A. I don't think so.

Q. The Inventory Guide recommends certain basic stock. Do you have any idea what a basic stock would cost, if they were to purchase everything listed in there? (2768) A. No, I haven't. I don't have that figure available. You will notice we show three recommendations, but the most important column for the dealer on this is the column way off to the right, and that is the basic stock that the dealer himself returns, which is right for his particular operation.

Q. I understand that. There are three categories as I recall. There is one station doing so much business and the next station. A. That's right. They are recommendations. But they too would differ based on certain type automobiles in that given community, even though the gallonage might be the same in Chicago as it might be in Rockford, for example; the type merchandise that those two dealers would stock would differ to quite a degree.

Q. So you couldn't just follow that example? A. That's right. You cannot.

Q. You can't give us an example? A. No, sir.

Q. In addition to that basic outline, what else would the dealer need? Does that cover about everything that

the average station operator would require? A. The recommendation that we make?

Q. Yes. A. As of today it doesn't because new sizes of tires have been added since this book was printed, with the new cars (2769) coming out on 14-inch, there is no 14-inch recommendation in this booklet.

Q. I am thinking more of category of supplies rather than sizes of any particular item. A. Everything that we have available through our sources I would say is pretty well shown in here. We have left several blank pages in this booklet to make it easy for the dealer to list other things that he would like to keep a control on, regardless of where his supply might come from.

Q. With the election that the station operators have as to source of supply, how does that affect your record keeping in so far as the TBA commissions are concerned? Does each distributor send a record to you of the purchases of the various petroleum stations? A. Each distributor or supply point does give a report to our accounting department of sales made to various outlets.

Q. There is no more designated supply point, is there? A. The dealer can go buy from anyone he sees fit.

Q. Do Goodrich salesmen call on the Texaco and Conoco stations? A. Pardon?

Q. Do your B. F. Goodrich salesmen call upon the Texaco and Conoco stations in an attempt to sell TBA products? A. Certainly.

Q. Do they make regular calls on them? (2770) A. They make—I don't know if I understand your question about regular calls.

Q. Do salesmen have a certain fixed route? A. Yes, they have areas they cover.

Q. In those areas are there Texaco-Conoco stations? A. And all other types.

Q. Surely, but included are Texaco and Conoco stations. Do the B. F. Goodrich salesmen call on those stations regularly? A. Not regularly. If they are now buying TBA from one of our distributors they would make periodic calls, possibly with our distributor salesman. If they are not handling our TBA they most certainly do contact them in an effort to get our products into that outlet.

Q. That was what I was trying to determine. Normally then your distributor salesmen call on Texaco-Conoco stations that are purchasing B. F. Goodrich products? A. That's right, the supply point.

Q. And on occasion the B. F. Goodrich's own salesman would call on them? A. He would call on them with the distributor that is now supplying them.

Mr. Dias: I believe that is all.

Cross-examination by Mr. Barton:

Q Mr. Carlson, you have indicated that the dealer elects (2771) the supply point which he is going to utilize. Do you receive something from the Texas Company which indicates when a dealer has elected to take on the Goodrich line? A. Yes, we do. We receive a notification form which we in turn fill out, indicating to the Texas Company the initial order that has been delivered to that outlet.

Q. What is the situation with respect to whether the dealer has already been contacted by B. F. Goodrich before that so-called nomination form is received by you from the Texas Company? A. You refer to nomination. However, the form we receive is called a notification form on which we notify the oil company of our progress in selling our merchandise to that operator.

Q. What is this nomination form? Is there a nomination form used? A. I know of no such form called nomination. Like I say, the form that I am familiar with is called a notification form.

Q. What is the situation with respect to whether you have been in contact—B. F. Goodrich salesman or distributor salesman—has been in contact with that dealer before that notification form is received by B. F. Goodrich? A. That happens quite frequently because when a new building or a new station is being erected in that given territory, the manager, as we call them, or salesman, is certainly going to (2772) try to find out who that operator is going to be and make every effort to sell his merchandise. And as a result, like I say, we sometimes made the initial sale long before we ever receive any form of any description from anyone.

Q. In the case where you make that initial sale what transpires thereafter in order to get the records in shape so that you pay the Texas Company a sales commission? A. We indicate on this notification form the name of the dealer, the supply point—supply points if there are more than one involved at the time, and indicate the amount of the initial order and return a copy to our accounting office, which indicates on our records that such and such an account is now being supplied by one or more supply points, and a copy of that is also sent to the Texas Company.

Q. Suppose you do not know prior to the time that the station opens who the dealer is. What happens in that type of situation? A Texas dealer. A. Suppose we do not know?

Q. Yes. Your salesman or distributor salesman has not determined who the operator is. How is a situation like that handled? A. Of course, the aggressive salesman is going to do everything in his power to find out who the

operator is. And if it is a Texas station, he will certainly make every effort possible to find out through the Texas Company if they have (2773) given us any information as to who that operator is to be. Sometimes our distributors have been successful in coming up with the operators. It may seem a little unusual, but four of our distributors in the Cook County area prior to becoming a distributor were service station operators. And with that background they have a pretty good idea of just exactly what type individual would be needed to successfully operate a station, and also the type individual that would fit into that type of business.

Q. In connection with the sales presentation that is made by the B. F. Goodrich territorial manager and the distributor of B. F. Goodrich, is the Texas Company salesman along on that presentation or not? A. To my knowledge the Texas Company salesman has never been with us on that presentation. He may be with us on a follow-up call. He has been on a number of occasions when the dealer has made a decision as to which line of merchandise he is going to carry.

Q. What is the nature of that sales presentation that is made to the Texas Company dealer or to any other petroleum dealer? A. The first thing we present to the dealer is the quality of the products that we have to offer, the completeness of our line, the public acceptance of the line, and of course the numerous supply points that we have in the territory.

(2774) Q. Anything else in connection with merchandising? A. Various merchandising helps that we have, promotional items, promotional programs. We have for the past number of years had a program which we refer to as traffic builders. They are leader items. In the past few years they have been tested one year prior to the time we make them available to the service station dealers so

that we know whether or not the item we are selling them is an item that will move in its type of outlet and help him increase his sales, not only TBA-wise but petroleum likewise.

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(2775) *Cross examination by Mr. Royall*:

Q. As I understand your testimony, the Goodrich people, through their distributors or through their stores, approach a prospective or a new station owner as soon as they know anything about it and try to sell him. Is that right? A. That is part of their job, yes sir.

Q. They, if possible, get the first order from him as promptly as they can, do they not? A. That's right.

Q. And then from that time on they continue to sell him and to keep him as a customer. Is that correct? A. That is correct. That is the intent.

Q. These distributors that you list here, they are not subsidiaries or connected with the Goodrich Company except that they distribute your goods. Is that correct? A. The only ones that are connected with our company, or over which our company has any control, are the company-owned stores shown on page 2.

Q. I didn't ask about that. The distributors themselves— A. Are strictly independent merchandisers.

Q. Independent businessmen, seeking to sell other independent businessmen? A. Yes, sir.

Mr. Royall: That is all.

(2776) *Redirect examination by Mr. Dias*:

Q. These independent businessmen, the distributors, where do they get their supplies from, Mr. Carlson? A. They get the majority of their supplies shipped from our warehouse here in Chicago.

Q. And your warehouses, where do they get their supplies? A. Our warehouse here in Chicago. The majority of that comes from Akron, some of it might come from Miami, where we have factories. And then a number of our "A" items such as our polish and wax will come from various manufacturers of that produce. Simonize, DuPont and so forth.

Q. Located all over the country? A. Yes, sir.

Q. Do you know anything about the Goodrich warehouse operations? A. Very little. I know where it is.

Q. That is not within your— A. I have nothing to do with that whatsoever.

Q. You stated that Goodrich often makes a sale before it is notified by Texas. Is that what you said? A. Yes.

Q. Do you go out and find new Texaco business, I mean you see the store and station being erected and you make the contact ahead of time? (2777) A. If we know who the operator is, if we can find out we don't wait for anyone to tell us that this man is going to operate this station. We will make a call or any number of calls that we can to sell our franchise rather than wait for someone to say that Joe Blow will lease the station from us.

Q. Isn't it true that Texas notifies you in each instance when they have a new station going up or a change of operator? A. I wouldn't say it is true in each case. In a number of cases, as I have indicated, we have an operator sold before we receive any notification.

Q. Does Goodrich sell to every station—let's take Texas for example. Texas notifies you that they have a half dozen stations. Do you automatically try to sell each and every one of those? A. Yes, sir.

Q. Do you screen them in any way? A. Do we screen them?

Q. Yes. Suppose you had a station within the same trading area of each other. A. If we have a good dealer,

associate dealer, maybe right across the street from one, we certainly wouldn't put forth as much effort, and if it would interfere with the distribution of our other dealer we may pass up a dealer.

Q. In other words, you approve some and disapprove others? A. That is correct.

(2778) Q. When you disapprove a station do you notify Texas in return that you don't care to do business with a particular station? A. Since I have been on my new assignment I have never had an opportunity to do one or the other as yet. Prior to that time if he was disapproved, I am sure they would be notified accordingly.

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HUBERT J. REICHERT was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and title please? A. Hubert J. Reichert.

Q. And your title? A. Presently I am on the staff of the regional manager. Prior to that, January 1, I was district manager, Chicago (2779) district.

Q. When did you first become district manager? A. November, 1946.

Q. November, 1946? A. Yes.

Q. Through December, 1956? A. Yes, sir.

Q. What were your duties in that capacity, from November, 1946, to December, 1956? A. To regulate the sales activities of the Chicago District of the B. F. Goodrich Company, which included sales through stores as well as to and through dealers and distributors. Several of those things were delegated of course to store supervisors, men like Mr. Carlson.

Q. You were primarily responsible, however, is that correct? A. Yes, sir.

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(2781) Q. Mr. Reichert, in your 10 years in that position was it your experience, too, that Goodrich sold to many Texas stations before being notified? A. I would say so, yes. In the main. B. F. Goodrich was one of their distributors.

Q. Isn't it true that Texas notified you when they did have a new station or a new operator taking over a station? A. I believe so. I think that was part of the plan of the program. I don't know whether it was done all the time or not, but I believe that they did.

Q. And is it your testimony that you were still able to ferret out and sell to these new operators or new—either new station operators or replacement station operators—before being notified by Texas?

Mr. Barton: I object to the form of the question.

Hearing Examiner Kolb: Objection overruled.

A. Yes.

By Mr. Dias:

Q. Is the same true in connection with your experience with (2782) Conoco? A. Yes, I would say so.

Q. And any other oil companies in the district to which you sell. In other words, you do not sell to Emblem? A. No.

Q. Shell American? A. In Indiana, not here.

Q. How about Ohio Oil? A. Yes we do.

Q. And the same is true— A. Not in Cook County but in the area, in the district.

* * *

Q. Do you know what an active account is Mr. Reichert? A. I wouldn't know how to answer that.

Q. Does Goodrich— A. For this reason: We desire to do our share, which is a certain amount of industry potential in each area, and perhaps through such things as spring dating that we have—

Q. Such things as what? A. Spring dating, where we sell in the spring and winter on extended terms, we may early in the year get our necessary share of the business out of the market. So the fact that a man didn't buy for awhile would not make it—I just wouldn't know how to answer that.

Q. In your experience has it ever become necessary to notify or have you ever seen fit to notify one or the other of these (2783) oil companies that an account was inactive? A. Oh, I see what you mean. You are talking about service station dealers entirely.

Q. Yes. A. No. The notification usually comes from them.

Q. Comes from whom? A. From the petroleum company, in the case of Texas.

Q. They notify you that they are not buying your products? A. Yes. When they haven't bought for a certain period of time, and ask for increased activity to activate the account.

Q. What is the procedure in that instance? What does Goodrich do about that? A. I get after Mr. Carlson and he gets after the territory man to get something done about it to generate some sales.

Q. We understand that after 90 days if you do not sell them they go over to the other recommended rubber company. Do you know anything about that? A. No, I don't.

Mr. Dias: That is all.

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(2786) ARTHUR V. RICHMOND was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Will you give us your full name, please? A. Arthur V. Richmond.

Q. With what company are you connected, Mr. Richmond? A. The owner of the South Tire Service.

Q. Where is it located? A. At 6622 South State Street.

Q. Does it have any other place of business besides that? A. No, sir.

Q. How long have you been in business as the South Tire Company? A. Roughly 17 years.

Q. Exactly what is the business? Will you describe it for us? A. I beg your pardon?

Q. Will you describe the business of the South Tire Company? A. Yes. We are wholesale and retail tire dealers, and (2787) also deal in batteries and have a repair and recapping department.

Q. What brand of tires does your firm sell? A. Primarily Goodyear, although I do handle some Cooper and McCreary.

Q. How long have you been handling McCreary tires? A. Since last April or May of 1956.

Q. What about Cooper tires? A. About the same time.

Q. And how long have you been selling Goodyear tires? A. Since the start of our business about 17 years ago.

Q. What about the batteries you sell? What kind are they? A. We sell our own brand of batteries. We have them made up by another—by a manufacturer with our name, the name of Richmond on the battery.

Q. How long have you sold that brand of battery, the Richmond battery? A. At least six or seven years.

Q. Mr. Richmond, what would you say is the geographical trading area of your company? A. On the truck tires we cover pretty much the entire city. By that I mean that we have customers as far north as Evanston and as far south as Chicago Heights. We also have customers in Franklin Park. However, that is considered a remote section. The reason that we have those customers (2788) is through service that we have rendered at one time or another.

Q. Will you explain to us then—do you sell truck tires? A. Yes, sir.

Q. And passenger car tires? A. Yes, sir.

Q. Is the trading area different for the two? In other words, is it different for the truck tires as compared to the other? A. Yes.

Q. Will you explain that? A. For the passenger tires I would say that 55 Street on the north, and on the south we may go as far as 111th Street, and Cicero Avenue on the west, and to the Lake.

Q. How many salesman does your firm employ at the present time? A. Three. Outside salesmen you are talking about?

Q. Yes, sir. A. Three.

Q. Do all three of those salesmen call on service stations? A. No. Right now I only have one salesman calling on service stations. I used to have two.

Q. Who is the one salesman that calls on service stations? A. His name is Joseph Arey.

Q. And the other two salesmen, what class of accounts do (2789) they handle? A. Primarily truck; commercial, we call it.

Q. Mr. Richmond, will you tell us the class of customers with whom your firm does business? A. We sell tires to the retail trade, the trucker, manufacturers, and service stations and garages.

Q. Can you give us some idea of the approximate percentage of business with those several classes of customers as of the present time? A. Percentage of business with service stations today, I would have to say was about 10 percent. That is ten percent of our tire business would be service stations. Is that what you wanted to know?

Q. Yes. And the balance would be with these other categories, truckers and so forth and garages? A. Yes. The truckers would amount to 35 to 40 percent.

Q. How does the amount of service station business done today compare with what it was last year? A. I would have to say that it was off probably ten percent from last year.

Q. Bring us down from 1952 to date. A. I think you have my records on that, Mr. Boyd.

Q. Before we get into that let me ask you another couple of questions.

Mr. Richmond, how many service stations of all (2790) kinds would you say there are in the trading area in which your company does business? A. I would just be guessing but I would say roughly 500.

Q. Do you have any idea as to how many Texaco stations are in that group? A. I would say about 40.

Mr. Royall: How many?

The Witness: Forty.

By Mr. Boyd:

Q. And stations of the Continental Oil Company? A. I wouldn't have any idea on Conoco.

Q. You brought some records with you, Mr. Richmond, and I now hand them to you. Will you tell us what those are? A. This is a summary of our annual bonusable volume—annual volume—

Mr. Royall: Your Honor, we object to that. Have you offered it yet?

Mr. Boyd: Not yet.

Mr. Royall: On the grounds they are not the original records and there is nothing to support them.

Hearing Examiner Kolb: Identify the records.

The Witness: May I answer that?

Mr. Boyd: Yes, sir.

A. (Continuing) These records are the year-end summary sheet mailed to us by the Goodyear Tire and Rubber Company (2791) indicating the amount of business that we did during the entire year.

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

By Mr. Boyd:

Q. And for what purpose did they mail those to you? A. It is for the purpose of us checking for our bonusable volume. In other words, they pay a bonusable volume on certain sales, and this carries a breakdown of all types of sales and what bonus it carries.

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

By Mr. Boyd:

Q. What years do they cover?

Mr. Royall: May we have a continuing objection to this, your Honor?

A. I have the years 1953, 1954 and 1955.

By Mr. Boyd:

Q. Have you made some summarization of those particular records, Mr. Richmond? A. Yes, sir; I have.

Q. What does that summarization reflect? A. In the—

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

(2792) A. In the passenger tire business, Mr. Boyd?

By Mr. Boyd:

Q. Yes, sir. A. In 1953 our passenger tire purchases from Goodyear amounted to $198,011. In 1954 it dropped to $128,371. In 1955, $102,437.

By Mr. Boyd:

Q. Have you received the report—

Mr. Royall: Your Honor, we move to strike that and object to it.

Hearing Examiner Kolb: Objection overruled. Motion to strike denied.

By Mr. Boyd:

Q. Have you received the report from the Goodyear Tire and Rubber Company covering similar information for the past year 1956? A. I have not.

Mr. Royall: I have not.

Hearing Examiner Kolb: Objection overruled.

By Mr. Boyd:

Q. Do you have some idea of what that was in 1956?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. I would say in the neighborhood of $80,000.

Mr. Royall: Motion to strike.

(2793) Hearing Examiner Kolb: Denied.

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By Mr. Boyd:

Q. What types of tires are sold in service stations? A. Mostly passenger.

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(2797) *By Mr. Boyd:*

Q. Mr. Richmond, could you tell us as of today how many Texaco service station accounts your firm sells new tires to? A. Actually, we don't sell any. Occasionally we will get a sale from a Texaco station where the customer comes in and demands a special brand of tires other than what they are handling. But those are few and far between. I would say that that happens maybe once every three months or even less.

Q. What was the situation a year ago? A. About the same. It is gradually getting worse from year to year, actually, but I think possibly that a year ago we sold a few more tires, but not many. Just talking strictly of Texaco sales?

Q. Yes. A. That is right.

Q. What about from the situation say 1952 to date? Can you tell us about the amount of business that has been done with the Texas stations?

(2798) Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. In 1952—Mr. Boyd, that is going to be awfully hard to answer. In 1952 we sold considerably more. I wouldn't want to place a dollar and cents value on it because I

wouldn't know. But we did sell quite a few more tires to Texaco stations then than we do now. It was easier to sell at that time.

Mr. Royall: Motion to strike the whole answer, and particularly a motion to strike "easier to sell" which is a conclusion.

Hearing Examiner Kolb: The motion to strike is denied.

By Mr. Boyd:

Q. Mr. Richmond, you have told us you sell the Richmond battery. Of your volume of sales what percentage of your business is batteries? A. Five to eight percent.

Q. Do you sell any accessory items such as spark plugs, fanbelts, radiator hose? A. No, sir; none at all.

Q. Then your business is tires and batteries only? A. And vulcanizing and recapping.

Q. In that connection what percentage today is recapping and vulcanizing? (2799) A. That would run about 23 percent.

Q. How has it been since 1952 to date? A. Vulcanizing and recapping has increased every year.

Q. From what to 23 percent? A. You are talking percentage-wise what was our vulcanizing in 1952 as against our sales in 1952?

Q. Yes, sir. A. I would say in 1952 our recapping was 15 to 20 percent.

Q. And it has increased to 23 percent over the four-year period? A. Yes. The figures for 1956 is what I have in mind as being roughly 23 percent of our total business, vulcanizing and recapping.

Q. At the present time does your firm sell any new tires to Texaco stations? Tires and tubes?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. I have a record of one sale of four tires in the last 90 days, and that is for a customer—I followed this up myself, figuring that there might be more business there—it was where a customer demanded Goodyear tires, and rather than lose the sale he purchased them from us. That is the only sale that I have any record of as far back as I can recall or as far as I could find looking over invoices.

Mr. Royall: I move to strike because it embodies (2800) hearsay, your Honor.

Hearing Examiner Kolb: Motion to strike denied.

By Mr. Boyd:

Q. Mr. Richmond, what efforts were made by your company to sell new tires and tubes to Texas stations? A. In the last four or five years—not that long ago—say the last three years—we have put forth very little effort because at that time we more or less gave it up as a bad job. No matter how many calls we made our efforts were just nil.

Mr. Royall: Motion to strike the answer, your Honor, on the ground it contains a conclusion.

Hearing Examiner Kolb: Motion to strike denied.

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Q. Why have you given up the efforts?

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A. When you make a hundred calls and they show no signs of business, and then maybe continue to make calls another

hundred and still are told from time to time that they can't buy your tires, that they have to buy Goodrich, I think it is time to give up on it.

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(2801) *By Mr. Boyd:*

Q. By whom are you given such information as you just related? A. By the Texaco stations that we called on.

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Q. Is there any Texaco station today that openly displays tires that your company sells to them? A. No, sir, not that I know of.

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Q. Mr. Richmond, does your company do any recapping business with Texaco stations? A. Yes, we do.

Q. Has that been true over the years 1952 through 1956? A. We have always done some recapping and vulcanizing with (2802) the Texaco stations—with some of them.

Q. About what percentage of your business of recapping is with the Texas stations? A. Mr. Boyd, I—

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. (continuing) I don't think I could come up with a percentage. It is small, but it wouldn't be over say 1 percent of our total sales.

Q. Do you sell any new batteries to Texaco stations? A. No, sir.

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(2803) Q. Mr. Richmond, in order to set the record straight: Even in view of your earlier testimony that you have given up generally soliciting the Texas stations, have you made some recent efforts, within the last two months, to sell Texas stations?

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A. Yes, we have.

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(2804) Q. Can you tell us what the results of those efforts were? A. Mr. Boyd, I instructed my salesman to make the calls, and the only way that I could give you the results is through a note, memos that I brought with me, which were taken off of his route cards.

Q. Who is the salesman? A. Mr. Joseph Arey.

Q. He is here in the hearing room? A. Yes, he is.

Q. Has he been subpoenaed to testify? A. I beg your pardon?

Q. Has Mr. Arey been subpoenaed to testify? A. Yes, sir.

Hearing Examiner Kolb: It is immaterial.

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(2809) *Cross examination by Mr. Royall:*

Q. Mr. Richmond, I believe you described the territory in which you operated. What part of the Greater Chicago area does that embrace as far as filling stations are concerned, would you say? A. As far as filling stations, I would say that we don't stray very far north of 55th Street.

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(2810) Q. Have you any approximate idea of how many filling stations or service stations there are in that area? A. You are speaking of 55th and the north?

Q. The territory you described. A. I only guessed when I said 500.

Q. And you are not at all certain that that is correct are you? A. No, sir.

Q. There might be many more. A. Yes, sir.

Q. Tell me a little about your business. Who is the owner of the business? A. I am the owner, sir.

Q. When did you start? A. I started in July, 1939.

Q. Do you keep any books? A. Yes, sir.

Q. Who keeps them? A. We have a bookkeeper and an accountant.

Q. Do your books and records disclose your sales and to whom you sold them? A. By that do you mean a breakdown of sales to trucks and trucking companies and service stations?

Q. That's right. The people to whom you sell. Do you keep (2811) any books and records on it? A. On the charge accounts, certainly, yes. But the cash sales are kept by invoice.

Q. And do you have the invoices? A. Yes, sir.

Q. In the various figures which you gave today, did you refer to any of the invoices? A. Yes, I did.

Q. Where are they? A. The invoices?

Q. Yes. A. At the office.

Q. You didn't bring them with you? A. No, sir.

Q. Did you look at them or your bookkeeper? A. No, I looked at them.

Q. Can you produce for us in the morning the invoices of the amount you sold to service stations during the period you testified about? A. I don't know if I could or not. I would have to go through each and every invoice and that would be a pretty tough job.

Q. Didn't you go to the invoices when you were preparing for your testimony here? A. Yes, I did.

(2812) Q. You can do that again, couldn't you? A. Covering a period of three years?

Q. You testified over a period of three years. Could you do that again? A. I assume I could. It would take considerable time.

Q. You wouldn't object to bringing them in tomorrow, would you? A. Well, I have other commitments for tomorrow.

Q. You have other commitments. So you haven't got those available for us.

Describe your place of business. A. Do you mean the frontage and so on and so forth?

Q. Where it is located, what size is it and so forth. A. We are located at 6622 South State Street, and we have in one part a garage consisting of an area 50 feet wide and 115 feet long, approximately; a warehouse 25 by I would say 90, two floors. By that I mean a basement and the first floor. And we have a recapping plant 25 by 176.

Q. How many employees do you have? A. Nineteen.

Q. How many salesmen? A. Three.

Q. Are you acquainted with the Texas filling station at 5000 Archer Avenue? A. I wouldn't be myself because I don't call on service (2813) stations.

Q. You don't call on service stations? A. I have a salesman who calls on service stations.

Q. When is the last time you called on a filling station? A. I have made—I shouldn't have said that I didn't call at service stations. I do. But I haven't called on a Texaco service station—

Q. In how long? A. I guess the last one was about two months.

Q. And before that when was the last one you called on? A. I don't recall.

Q. Was it within a year? A. I would say yes.

Q. What station was it? A. The one I called on recently or previously?

Q. Let's say recently. A. It is located at 120th and Western Avenue.

Q. What was the last one you called on before that? Approximately you said a year before. When was that? A. That I don't—I couldn't honestly answer that question.

Q. The year before that how many did you call on? A. I don't know, sir.

Q. Did you call on any in the year before that? A. It is possible.

Q. It is possible that you did. You don't remember which (2814) one do you? A. No, sir.

Q. And the year before that? A. That I wouldn't be able to answer without possibly digging into the records and hunting for that particular information.

Q. But so far as you know now, this one that you have mentioned to me is the only one in the past several years that you can remember specifically? A. That is fresh in my mind, yes.

Q. That is the only one that you can remember right now? A. Yes.

Q. By the way, 5000 Archer Avenue is in your territory that you cover, isn't it? A. No, sir.

Q. Isn't it? A. No, sir.

Q. You said the 5000 block, didn't you? A. Cicero Avenue on the west.

Q. What? A. 5500 on the south, and Cicero Avenue to the west. 5000 Archer would be out of that territory.

Q. In other words, this may be a block or two west of where you deal? A. It would be further than that.

Q. How about 3101 North Manheim Road; is that in your (2815) territory? A. No, sir. That is on the northside.

Q. Lincoln and California, is that in your territory? A. No, sir.

Q. Van Buren and Des Plaines, is that in your territory? A. No, sir.

Q. 5450 North Elston? A. No, sir.

Q. Can you give me the name of any Texas stations in your territory, about three or four of them? A. Can I refer to notes?

Q. No sir. I would rather you tell me. A. Well, the one I named at 119th and Western; 55th and Emerald. That is all I recall offhand.

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(2816) *By Mr. Royall*:

Q. Did not you testify that no station openly displayed the type of tires I sell. Didn't you say that? A. What I was referring to in my testimony was that the only tire we sell to the service station is Goodyear. We do not sell Cooper tires.

Q. Have you ever sold Cooper tires to service stations? A. I don't recall ever selling any. If we did, it was a rare occasion. And none of the stations that we sell display Cooper tires or Goodyear.

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(2817) Q. Do the Texas stations display any Goodyear tires? A. None that I know of.

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(2821) *By Mr. Royall*:

Q. Have you got a list of the time and the stations you went to in that hundred? A. This, sir, goes back to 1952 or '53, and I would not have a list that old; no, sir.

Q. Have you any record of where they were, when it was? A. Not as far back as that; no, sir.

Q. Have you got it any period back? A. Yes, sir.

Q. Where is the record? A. I have a record with me of calls that we made just (2822) recently.

Q. You didn't make them, did you? A. No, sir.

Q. Have you any record of those that you made? A. No, I don't have any record of calls that I personally made.

Q. Have you got a record of any that you made except for the one that you told about? A. No, sir, I do not.

Q. Have you with you your books and records on your sales and to whom you sold them? A. I didn't get the first part of the question.

Q. Do you have with you, available, the books and records on your sales, year by year, and to whom you sold? A. No, sir.

Q. Have you records you could produce here tomorrow to show that? A. Not tomorrow I couldn't produce them.

Q. Did you use any of those records in preparing for this testimony? A. Yes, sir.

Q. Where did you put them? A. I have them at the office.

Q. Did you put them right back where they were? A. That is correct.

(2823) Q. You could get them immediately, could you? A. I could but I have other commitments for tomorrow.

Q. Is that your reason for not producing them? A. I would be glad to show them to anybody who wants to come out to the office.

Q. Is that the best you are willing to do? A. Unless subpoenaed to do otherwise, yes.

Q. I believe you testified—you have testified that you do not carry any accessories, do you? A. No, sir.

Q. Just tires and batteries? A. Yes, sir.

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Cross examination by Mr. Barton:

Q. Mr. Richmond, I think you testified that you sold about 45 percent of your business to truckers. Is that right? A. I don't recall that figure. That figure wouldn't be hard to look up but I don't recall saying 45 percent.

Q. You also said you sold to manufacturers? A. Yes.

Q. What kind of manufacturers is that? A. Do you want me to name them?

Q. Just the general type. A. Like the Crane Company, for instance.

Q. Pardon? (2824) A. People like the Crane Company, National Biscuit; and it is not a manufacturer but I would include railroads in there, too.

Q. Those would be commercial accounts? A. Yes, sir.

Q. Just as truckers are commercial accounts? A. That is considered commercial in our field.

Q. And that is a rather well defined section of the tire business, isn't it, the commercial business? A. That is right.

Q. It is a rather separate type of business from the wholesale business? A. Yes, sir; it is.

Q. And it requires a different type of salesmanship and solicitation, doesn't it? A. Correct.

Q. And the commercial accounts don't use accessories. They don't buy accessories; they buy tires, is that right? A. Not having ever sold accessories, I couldn't answer that intelligently because I never asked anybody to buy them.

Q. In other words, it isn't necessary to have accessories in your line to sell commercial accounts, is it? A. Well, yes. I think that accessories, all the truckers can be sold accessories, and use accessories, but that manufacturers, strictly a manufacturer, I would have to agree (2825) with you that you don't need accessories to go and sell the National Biscuit Company or something like that.

Q. What percentage of your business is to manufacturers like Crane and others of that type? A. I would have to refer to the records to give you an intelligent answer.

Q. Isn't it a fact that about 75 percent of your business is this so-called commercial business, for hire? A. I don't think 75 percent. I am just trying to think back how our retail sales ran last year, along with service station dealers. I think that is a little high.

Q. Do you mean your retail business, that you have a retail business in your store? A. Yes, sir.

Q. Over the counter? A. Yes, sir.

Q. To customers who come in there? A. Right.

Q. But your retail business along with your commercial business would be over 75 to 80 percent of your business, wouldn't it? A. I would say Yes, that it would be roughly in that neighborhood.

Q. And you started out in 1939? A. Right.

(2826) Q. With no business? A. No business.

Q. Since 1939 you have grown to a tire dealer of more than $450,000 or $500,000 retail, haven't you? A. Do you mean per year?

Q. Yes. A. Oh, those figures are approximately correct; yes, sir.

Mr. Barton: That is all.

Redirect examination by Mr. Boyd:

Q. Mr. Richmond, just to clear this up, you said a moment ago that your volume of sales is $450,000 to $500,000 retail? Or is that the total amount of your business, the volume that year, roughly right now? A. Right now it is—I don't recall the exact figures for 1956, but—

Q. In other words, is that all the business or just the retail business, this $450,000 to $500,000? A. That is the entire amount of business that we are doing.

Q. In other words, to commercial accounts— A. To everybody.

Q. (Continuing) —retail, service stations? A. Everything; that is right, sir.

Q. Since you have been in business, Mr. Richmond, since 1939, and it has been brought out that your sales are now $450,000 (2827) to $500,000, what has been the relationship of your commercial account business over those years? Has it increased or decreased? Just what is the situation as compared to the filling station business? A. I would have to say that the commercial business has increased.

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By Mr. Boyd:

Q. Mr. Richmond, is it normally part of your duties to call on accounts yourself? A. I would say that, to put it in terms of my own words, that I try to hit the high spots.

Q. Commercial or gasoline accounts? A. In—

Q. I mean by that commercial or service station accounts. A. If I feel like a service station account might develop, (2828) I will make calls on them. But mostly it is commercial. I make considerable more commercial calls than I would make in service stations.

Q. On cross-examination you also mentioned a station at 119th, I believe, and Western Avenue. Is that on the South Side? A. I said 120th and Western, which is in error. It is at 119th and Western. It is known as Norm and Bob's Texaco Service.

Q. Had your firm made a sale there? Just what was the situation? A. Yes, we sold a set of tires about three months ago to them and on my way home I stopped and talked to them about the tires they purchased from us because we had done no solicitation there. I was wondering if there was any prospect for any additional business.

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By Mr. Boyd:

Q. Had you sold any tires to that dealer prior to that time? (2829) A. No, sir.

Q. Have you sold any since? A. I don't believe so. I looked for a record on it and couldn't find it.

Q. Have you endeavored to sell that station since, yourself? A. Not myself, no.

Mr. Boyd: That concludes the redirect.

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JOSEPH C. AREY was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Arey, will you give us your full name? A. Joseph C. Arey.

Q. What company are you connected with and your position? A. South Tire Service, 6622 South State Street.

Q. What is your position? A. Salesman.

Q. How long have you been with South Tire? A. Since 1940, except four and a half years working for "Uncle" in World War II.

Q. Do you have a geographical area that you sell in for (2830) the South Tire Company? A. Not specifically.

Q. Tell us where you do sell? A. My main activity is from 55th Street on the north to Lake Michigan on the east, 119th Street South, and approximately 5200 West. I have one or two accounts the other side of Cicero Avenue.

Q. What class of customers do you sell? Accounts? A. I call on gas stations and car dealers, a few garages. That is, repair shops.

Q. What percentage of your sales that you make, your accounts, would be service stations? A. Percentage of business?

Q. Yes. A. My total business?

Q. Yes. A. To gas stations?

Q. Yes, sir. A. Approximately 80 percent now.

Q. Do you sell any Texaco accounts?

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(2831) A. Yes.

By Mr. Boyd:

Q. What type of business do you sell that account? A. Occasionally I can get an order for Goodyear tires from a Texaco account in which the customer specifically asks for Goodyear. The rest of the business I am able to get from Texaco accounts are strictly repair business—section repairs, small amounts, $2.58, $3.61, whatever it amounts to; small amounts.

Q. Would that include recapping business? A. I haven't been successful in recapping except one or two cases.

Q. Then this business that you have of, you mentioned, 80 percent of your accounts being service station business, what you have named, is stations other than Texaco? A. That is correct.

Q. What products do you sell to service stations? A. Goodyear tires and tubes, retreading, and section repair work.

Q. What about batteries? A. No.

Q. Have you made a recent effort, Mr. Arey, to sell Texas stations? A. I have.

(2832) Q. Would you relate to us when this was? A. Last month. I mean the month of December 1956, and a few calls in November 1956.

Q. What was the result of those calls? A. I got a few section repairs and a couple of retread tires, tires to retread with a so-called snowcap, and that is it. That is the extent of the business I have been able to get.

Q. Can you tell us when these calls were made? A. Yes. I keep card records of the accounts that I call on. May I refer to these?

Q. Are these records— A. There are my own records.

Q. That you regularly make? A. My own personal records; yes, sir, of calls that I make.

Q. All right, sir, would you tell us when the call was made, the station, and the result? A. Benson Texaco Service Station, 2154 East 79th. The call was made 11/16/56. I made just a notation of the general conversation and the result of the call. He said he was pretty much soured on the tire business—disgusted, in other words, with the tire business as such.

Q. Just a second before you leave that. What line of tires did that station carry? (2833) A. Goodrich. They have Goodrich advertising on the outside of the station.

Q. Go ahead. A. John and Ken, Texaco Service.

Q. When was that? A. This was the 19th of November, 1956.

Q. Where is that station? A. They operate three stations. The station that I called on was at 8512 South Racine Avenue.

Q. What happened? A. The station operator, John Nemec — N-e-m-e-c — was the man I talked to. He said they are allowed to sell Goodrich or Firestone. He didn't care to offend Texaco by taking on, attempting to sell, any other line of tires. I offered to put a Goodyear Suburbanite tire on display, on a memo billing, and he could return it in 30 days if he had no luck with it. The answer was: "I am supposed to sell Goodrich."

Q. All right, sir. A. Check's Texaco Service Station.

Q. Where is that located? A. His name is Charles. It is 8700 Loomis Boulevard.

Q. What tire does he sell? A. He is advertising—that is the tire advertising is Goodrich.

(2834) Q. What happened? A. This is one of the leased station gas operators that is disgusted with the tire business and just didn't want to talk or care anything about it.

Q. Will you give us the date of the last one? Chuck's? A. 11/19.

Q. Go ahead. A. Berkland Texaco Service Station, 8259 Cottage Grove. Talked to Luke Berkland 10/15/56. Correction: 11/16/56.

Q. You mean November, in other words? A. Yes, November 16, 1956.

Q. Go ahead. A. He stated that he buys entirely from Lambie Brothers.

Q. What tires did he have on sale? A. Nothing but Goodrich. He had quite a stock of them, 40 or 50 tires. Not interested in Goodyear or any other make. Very much satisfied, he says, with Goodrich.

John Brown, Texaco, 2145 East 79th Street, 16th of November 1956. He also buys from Lambie Brothers, has six Goodrich in stock; said he didn't care to make any other arrangements at all.

Q. You mentioned Lambie Brothers. Who is that? A. They are a distributor for Goodrich. They are in a comparable position to us in the Goodyear business?

Q. Go ahead. (2835) A. Lewis E. Lioritti. May I withdraw that name, please?

Hearing Examiner Kolb: All right.

A. (Continuing) Arthur Gewalt, Texaco Service Station, 1237 East 79th Street. Called on him on the 10th of November 1956. He said he buys only from Lambie Brothers, wouldn't consider Goodyear.

By Mr. Boyd:

Q. What tires did he have? A. Goodrich.

Bob and Norm's Texaco Service Station, 11900 South Western Avenue. Talked to Bob Schultz on the 21st of November 1956. The gist of his conversation was to the effect that he wouldn't dare buy or display Goodyear tires.

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By Mr. Boyd:

Q. Does that conclude the specific instances that you can name now of recent calls?

Mr. Barton: I would like the record to show that he is not naming these from memory but has cards in front of (2836) him which he is reading, your Honor.

Hearing Examiner Kolb: The record may so show. He is refreshing his recollection from his cards.

The Witness: I have another record here that goes back sometime ago. I don't know whether it is allowable to bring it up. It is another Texaco station.

By Mr. Boyd:

Q. What year is it? A. 1954 and 1955.

Q. Who is it and what happened? A. Emerald Texaco Service Station, 740 West 69th Street. The operator at that time was Philip Kapella. The only business I was able to get out of Mr. Kapella was a little repair business and once in awhile I could make a fast delivery on a Goodyear tire, it goes on a customer's car.

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(2837) *Cross-examination by Mr. Royall:*

Q. Mr. Arey, have you any records of any other visits except those you have there on those cards? A. Yes, sir.

Q. Where are the records? A. In my car.

Q. In your car? A. Yes, sir.

Q. What period do they cover? A. From about 1952, sir.

Q. How many cards have you got? A. In the vicinity of 250.

Q. Do they embrace other stations besides Texas? A. Yes, sir.

Q. Have you with you any cards for this period for any other stations besides Texas? A. Not here at the moment. I have them in my car.

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(2838) Q. Have you any Texas cards for December of this year? A. 1956?

Q. Yes. A. Yes, sir. The evidence I gave is from these cards, 1956.

Q. Yours are from November. Do you have any for December? A. No, sir. That was the extent of my calls.

Q. Have you any for October? A. No.

Q. Or any of the months preceding it in 1956? A. No, sir.

Q. Have you any for 1955? A. I probably have.

(2839) Q. But you don't know? A. I believe I have a few cards of 1955, yes sir.

Q. Do you have any for 1954? A. I probably have, yes sir.

Q. When were you first approached about testifying in this case? It was in October was it not?

Mr. Boyd: I object, Your Honor, as being immaterial and irrelevant and not part of the direct.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Royall:

Q. When was it? A. My recollection, sir, is that it was the first part of November.

Q. The first part of November? A. Yes, sir.

Q. You are sure it wasn't the latter part of October? A. I wouldn't swear one way or the other. It is in that vicinity some place.

Q. One way or the other? A. Yes.

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(2840) Q. Do you have any other occupation besides that? A. Yes, sir.

Q. You are part-time on sales? A. Yes, sir.

Q. What is your occupation? A. Electrical operating engineering.

Q. Employed by whom? A. The Sanitary District of Chicago.

Q. The Sanitary District of Chicago? A. Yes, sir.

Q. Do you work a regular work week for the Sanitary District? A. It is shift work. They rotate, change from week to week.

Q. But you work a regular number of hours? A. Regular tour of duty, yes sir.

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(2841) Q. You know stations that sell Goodrich and have Goodrich signs—Texas stations—and also have signs of other tires, do you not? A. I have seen one other make, yes.

Q. What other make? A. Firestone.

Q. You never saw Goodyear? A. I don't remember seeing a Texaco station with a Goodyear sign.

Q. You have seen them with Cooper, haven't you? A. No, sir.

Q. Do you travel pretty much around Chicago? A. My activity, sir, is limited to very much the territory which I described.

* * *

Redirect examination by Mr. Boyd:

Q. Mr. Arey, will you tell us what part of your time is devoted to working as salesman for the South Tire Company? Tell us when you work. (2842) A. I will average between three and four hours a day.

Q. During regular business hours? A. Yes. I mean three or four hours a day during the workweek of Monday to Friday, inclusive.

Q. What about Saturday? A. No. Saturdays, Sundays, holidays are out as far as the tire business is concerned.

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HAROLD A. GEHRKE was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name for the record, Mr. Gehrke? A. Harold A. Gehrke.

Q. And place of employment? A. Berry Tire Company.

Q. And the address of Berry Tire Company? A. 6415 North Bosworth.

(2843) Q. What is your position with the Berry Tire Company? A. Sales manager.

Q. How long have you been in that position? A. Two years.

Q. Prior to that time? A. Salesman.

Q. How long? A. Five years.

Q. How long were you with them before that? A. Sixteen years.

Q. Have you had any other experience in a related business? In the same type business as Berry is in? A. Before I came with Berry?

Q. Yes. A. No.

Q. Your total experience has been about sixteen years in that type business, is that correct? A. With Berry.

Q. What kind of a business does Berry Tire Company have? A. Wholesale house, tires, batteries, accessories, vulcanizing and recapping.

Q. What brand tires do you carry? A. Dunlop.

Q. Is that the only one? A. Outside of the take-offs that we get through change over (2844) business of car dealers.

Q. What is a take-off? A. A take-off is a tire that you take off a brand new automobile. It could be one of the big four—Firestone, U. S., Goodrich, Goodyear.

(2845) Q. What battery do you handle? A. Auto-Lite.

Q. Is that the only make that you handle? A. In the new battery, yes, sir.

Q. How about accessories? Can you name a few of the more popular accessories? Filters, for example. A. We dropped the filter line. We don't have it any more. We are in the sealed beam business, polishes—we handle sealed beam, Gates fan belts, that type of merchandise, and polishes.

Q. You said you dropped filters? A. Yes, we don't handle filters.

Q. When did that happen? A. We dropped filters approximately about a year ago.

Q. What brand did you carry then? A. We had the Wix.

Q. Why did you drop that brand? A. Sales were not there. No sales.

Q. Do you handle any oils? A. Veedol.

Q. When did you drop that? A. I dropped that approximately a year and a half ago, that I dropped that line.

Q. Why did you drop it? A. Sales dropped down to less than one and a half percent (2846) of our business. It wasn't worth carrying.

Q. What about antifreeze? A. Antifreeze we have the Prestone line.

Q. Still carry it? A. Yes, sir.

Q. What are your annual sales figures, Mr. Gehrke, for the last four years? 1952 to date. Do you know those offhand? A. Approximately, in round figures, about $550,000.

Q. That is 1952 through 1956. Are there—are they still around the same figure? A. There was a slight figure in 1956. That is due to material increase and sub-jobber business, but not through territorial sales.

Q. What do you mean by that? A. Sub-jobber business entails—we have the warehouse on fan belts; we have the warehouse on spark plugs and the Auto-Lite line now, and batteries are so designed that you can put a sub-jobber in with the business and that business has crawled up and increased our sales.

Q. What type customer do you sell to? A. We sell 90 percent to gas stations, garages, and car dealers.

Q. What about the other ten percent? A. I imagine retailwise we do two percent of our business retail.

(2847) The rest would be the truck end of it—commercial.

Q. Eight percent of your business is to commercial? A. I didn't hear your question.

Q. About eight percent to commercial accounts? A. That would be on the heavy side; yes, sir.

Q. How about this jobber business that you talked about? Do they figure in this, the sub-jobbers that you talked about? A. Yes.

Q. Do they figure in these estimates that you gave me? In other words, are these sub-jobbers affiliated with your company? A. They are independent jobbers that we are doing business with, selling merchandise that we sell to them. They owe no allegiance to us.

Q. What I am trying to establish or find out is do you sell to these sub-jobbers. A. Yes.

Q. You sell to them? A. Yes.

Q. What percentage of this total business represents sales of that type? Do you have any idea? A. I would say 6 or 7 percent.

Q. These are all approximate figures? A. They are all approximate, yes, sir.

• • •

(2848) *By Mr. Dias:*

Q. Do you do any business with Texaco stations? A. Some.

Q. What sort of business? Do you sell them tires? A. I would say we sell them some tires. In our line Dunlop is original equipment on foreign cars, and where a customer has to have that particular size that we can supply and it has to be Dunlop, we sell them.

Q. And the request comes from a Texaco station? A. It could.

Harold A. Gehrke, for Commission—Direct

Mr. Royall: Objection. Leading.
Hearing Examiner Kolb: Overruled.
Mr. Royall: Please try to avoid that, sir.

By Mr. Dias:

Q. Do you sell any Dunlop tires other than to Texaco stations? In other words, do you have any steady Texaco station customers? A. Offhand I would say—would you mean where we would (2849) go in and stock a dealer with tires?

Q. Yes. A. Not that I know of; no, sir.

Q. Do you sell Texas stations any batteries? A. A few batteries, where Auto-Lite is demanded, yes.

Q. Are they bought on a stock or fill-in basis? A. Mostly by request.

Q. By request of whom? A. In other words Auto-Lite is original equipment on the Chrysler line and a few other lines, and the customer wants put back in his car what was taken out and it has to be Auto-Lite.

Q. That is the extent of your sales? A. As far as I know.

Q. What about accessories? A. Accessories are practically nil.

Q. Do you sell any other products to Texaco stations? A. Vulcanizing and recapping, a little bit. Not much.

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(2851) *By Mr. Dias:*

Q. What is the sales territory of Berry Tire Company? A. What territory do we cover?

Q. Yes. A. We cover everything in metropolitan Chicago. We don't cover south of 25th Street or east of Kedzie.

Q. Do you employ salesmen? A. Yes, sir.

Q. How many? A. Five.

Q. Are you in charge of those salesmen? A. Yes, sir.

Q. Do those salesmen in their normal course of business call on Texaco stations? A. I would say—

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. I would say they pass them up.

By Mr. Dias:

Q. They pass them up? A. Yes.

Q. Why?

Mr. Barton: Objection.

Hearing Examiner Kolb: Objection overruled.

A. Our men are on a commission basis and if you want to (2852) make some money you have to have calls that produce some sales for you.

Mr. Royall: Move to strike.

Hearing Examiner Kolb: Motion denied.

By Mr. Dias:

Q. Was your company at any time ever able to sell any Texaco stations?

Mr. Royall: Objection. That is a conclusion.

Hearing Examiner Kolb: Objection overruled.

By Mr. Dias:

Q. You may answer. A. What was the question?

Q. Has your company ever been able to sell Texaco stations? A. Before my time I suppose they were. But since I have been around I would say No.

* * *

(2853) Q. Do you consider your Dunlop tires and Auto-Lite batteries competitive with Goodrich and Firestone tires and batteries?

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. I do.

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By Mr. Dias:

Q. These Texaco stations that do buy your products, do they advertise them? A. No, sir.

• • •

(2854) *Cross examination by Mr. Barton:*

• • •

Q. Your customers are throughout the whole Cook County and Du Page County area, are they not? A. We travel all the way to the Wisconsin line.

Q. In Cook, Du Page, Lake and Will County, generally speaking? A. Part of our area.

Q. You have more than 600 accounts in that area, do you not? A. Are you talking about all our sales area?

Q. That's right. A. I would say so.

(2855) Q. That is pretty predominantly service station accounts? A. That's right.

Q. The new car market has sort of dropped off, hasn't it? The switch-over business? A. To a great degree, yes.

Q. You have an exclusive franchise for this area, for the four-county area for Dunlop tires? A. Yes, sir.

Q. You say Dunlop is a foreign tire; English tire? A. I did not say it is foreign.

Q. There is a Dunlop Company in England, isn't there? A. That's right.

Q. And they have an American company which also manufactures? A. In New York, yes, sir.

Q. But it is not used as original equipment on U.S.-manufactured cars, is it? A. No, sir.

Q. But it is used as original equipment on the British-made cars? On some of the British-made cars? A. That's right.

Q. And the battery which you stock is Auto-Lite, isn't it? A. That's right.

Q. Made by the Auto-Lite Company? (2856) A. Yes.

Q. You have a number of competitors in the Chicago market, don't you, who are selling tires? A. I would say so.

Q. United States tires, for example, are sold here? A. Yes.

Q. By a number of very strong and prominent distributors? Is that right? A. That's right.

Q. Among them are, in your area, Accurate Tire, located on North Western Avenue—3300. You are not familiar with them?

How about Chick Brothers, on the South Side? Are you familiar with them? A. Yes.

Q. And Serlin Tire. They are a large U. S. distributor in the Chicago area, aren't they? A. Yes.

Q. And Terman Tire is a large U. S. distributor? A. Yes.

Q. And of course there are a number of Firestone distributors in this area, aren't there? A. That's right.

Q. One of the largest is Allied Tire? A. Yes.

(2857) Q. And there are a number of independent B. F. Goodrich distributors in this area, aren't there? A. Yes.

Q. And you compete with Biltmore Tire Company, an independent Goodrich distributor, don't you? A. Well, compete is a broad word, but I will say Yes.

Q. And you compete with Gardner & Kienzle, don't you? A. Not too much.

Q. They are out of— A. Some of those companies serve an area that we dropped. In other words, don't serve that area any more.

Q. You compete with Lambie, don't you? A. Don't know him.

Q. And you also are in competition with a number of Goodyear distributors, aren't you? A. That's right.

Q. Al Maier, Inc., is one of the largest, isn't he? A. Yes.

Q. And you compete with him? A. To a certain extent.

Q. You also compete with South Tire? A. That's right.

Q. And there are a number of other Goodyear distributors in the Chicago area with whom you compete? A. That's right.

(2858) Q. And there are a number of other Goodyear distributors in the Chicago area with whom you compete? A. That's right.

Q. Do you run in competition with Michelin Tires? A. No.

Q. You compete with City Tire Company, who sell Mohawk, don't you? A. If they are in the tire business, we must compete with them. I don't know.

Q. You compete with the Pennsylvania Tire in Chicago? A. I suppose.

Mr. Dias: I object to the answer, your Honor. If you do or don't. You do or don't know. That is the answer.

Mr. Barton: Let the witness clarify. You can clear it up on redirect if you would like to.

By Mr. Barton:

Q. You compete with Champion-Graham Tire Company, selling Armstrong tires, don't you? A. Yes.

Q. And you compete in connection with the General tire with Dunne General Tire Company, located at 2249 South Cottage? A. Yes, sir.

Q. And you compete with Banner Tire Company, don't you? A. I never heard of Banner. I have no—

(2859) Q. You run into them occasionally, don't you? A. I have never heard of them.

Q. And you compete with National Battery on South Archer in connection with Dayton Tire? A. No, sir.

Q. You don't? A. No, sir.

Q. Never run into them? A. No, sir.

Q. Do you compete with City and Joe's Tire on the Seiberling Tire? A. No, sir.

Q. You have never run into Seiberling tires in competition with you? A. I have seen them, but never run into them, no, sir, not in sales.

Q. You have seen them around. They are selling in the Chicago market? A. They must be.

Q. You know they are here? A. Yes.

Q. And you know that Lee Tires are here, don't you? Lee Tires? A. Yes, sir.

Q. And they are sold to service stations, aren't they? (2860) A. Yes, sir.

Q. And Gates Tires are here? A. Yes, sir.

Q. And Fisk Tires are here? A. Yes, sir.

Q. Over the past few years you have had an increasing number of service station dealers in this four-county area, haven't you? A. I would think so, yes.

Q. Are you familiar with the negotiations which took place between B. F. Goodrich and your company in con-

nection with your company becoming a distributor of B. F. Goodrich Tires? A. No, sir.

Mr. Barton: That is all that I have.

By Mr. Royall:

Q. Mr. Gehrke, there are a great number of TBA distributors even in addition to those mentioned by Mr. Barton, aren't there? A. Yes.

Q. In the Chicago area? A. Right.

Q. As a matter of fact, there are in excess of 500 that are listed in the telephone directory, aren't there; in the classified section? (2861) A. I never counted them.

Q. That sounds about reasonable to you, doesn't it? A. It could be, yes sir.

Q. And there are 4,000, more than 4,000 service stations in Chicago are there not? A. There could be. I never counted them either.

Q. Does that sound reasonable to you? A. It sounds like quite a bit.

Q. But they are in the thousands anyhow, aren't they? A. Yes, sir.

Q. As a matter of fact, you sell and have been selling 46 Texas stations, that is, your company has, in Chicago, some of them for a great period of years? A. I couldn't verify that now.

Q. What position do you have in the company? A. Sales manager.

Q. Sales manager? A. Yes, sir.

Q. If they were called to your attention, you would remember a good many of them wouldn't you? A. I think that the names would ring a bell, yes sir.

Q. Do you know the Vince Allen station at Penn and Glenwood? A. Yes, sir.

Q. Have you been selling them Dunlop tires for 13 years and Auto-Lite for 13 years? (2862) A. Yes, sir.

Q. And Gates Radiator Hoses for 13 years and Ever-ready light bulbs and sealed beams for 13 years, and Prestone Antifreeze for 13, years, haven't you? A. Well, you are taking me back through a history, prior to the history of the company that I don't know anything about.

Q. I mean as far back as you remember. A. As far back as I remember they were customers.

Q. How long is that? A. Actively on the accounts I am just starting to associate myself with them. In other words, could I give you a little history?

Q. No, sir. I would like to hear it, I know it would be interesting, but what I would like to do is to get— A. For the last two years I know that they have bought from Berry Tire.

Q. Do you know Andrew Gumbar? A. No, sir, I don't.

Q. You don't know whether or not the company has been selling them Auto-Lite and Prestone for about 6 years, do you? A. No, sir, I do not.

Q. Do you know Arthur Hull, at Rogers and Damen? A. He picks up from the store, yes sir.

Q. And he has been carrying Auto-Lite for 7 years and Prestone for several years, hasn't he? (2863) A. Yes, sir.

Q. I believe you testified that the Texas Company did not advertise competitive products. Are you sure about that? A. To the best of my knowledge, yes sir.

Q. Do they display them? A. Some of our products are up in their tire racks, yes sir.

Q. This is Arthur Hull that I asked you about. That is his station, isn't it (handing)? A. It has been up for quite a while. That is his station.

Q. He displays Prestone—

Mr. Dias: Is this being offered?

By Mr. Royall:

Q. Doesn't he?

Mr. Dias: I object to this unless it is going to be offered.

Mr. Royall: I use it to refresh his recollection.

A. He displays Prestone, yes sir, in the window.

By Mr. Royall:

Q. Do you know J. Lipshultz, at 5459 North Clark? A. Say that name again?

Q. J. Lipshultz, 5459 North Clark. A. Catalpa filling, yes sir.

Q. And they have been selling for ten years Dunlop, Auto-Lite, Auto-Lite sparkplugs, A. C. filters, Westinghouse bulbs, and Evenseal caps? (2864) A. They have been more or less a pick-up service.

Q. They have been steady customers of yours, displaying your wares for ten years, haven't they? A. Yes, sir.

Q. Do you sell Delco batteries? A. No, sir.

Q. Do you know who sells those? A. Delco.

Q. Yes. A. Bell Park auto park, on Cicero Avenue.

Q. But it is not Goodrich? A. I wouldn't think so.

Q. Do you remember Al Johnson, at Belmont and Damen? A. No, sir.

Q. Maybe it will refresh your recollection. Would you remember a customer who buys 50 percent of his tires from you? A. By that name?

Q. Yes. That address. Maybe he has some trade name. A. No, sir.

Q. Do you remember the M and M Texaco Service at 304 East Central, Villa Park, Illinois? A. No, sir.

Q. Do you remember Elmer Mandell at Clark and Thome, in Chicago? (2865) A. No, sir.

Q. Do you remember M. Menke, who has been buying a number of your products, including Dunlop tires, for ten years? A. No, sir.

Q. You don't remember him? A. No, sir.

Q. Do you remember William Yucas, at Grass Lakes Road, Antioch, Illinois? A. Yes, sir, very well.

Q. They have been buying Dunlop, Exide, Westinghouse bulbs and sealed beams and Prestone, and 80 percent of his TBA from you. Haven't they? A. Yes, sir.

Q. For 8 years? A. I started to sell him myself five years ago.

Q. And they have been buying ever since, haven't they? A. Yes, sir.

Q. Do you know Art and Ed Behrens, at L and L Service Station, 134 North West Highway, Arlington Heights? A. Never been there.

Q. Would it refresh your recollection if they had been buying Dunlop from you for 15 years and Auto-Lite and other products for more than five? Would that bring anything to your mind? A. No, sir, it don't.

* * *

(2867) Q. Have you got a list of the Texas Company stations that your company sells TBA to? A. We have a sales record; yes, sir.

Q. That is in your office? A. At all times; yes, sir.

Q. Could you bring it here tomorrow so that we could get the names of those who buy and check them with our list? A. No, sir. It is available at our office.

Q. You decline to bring it without a subpoena? A. Yes, sir.

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(2868) *By Mr. Barton:*

Q. I take it you found it to be a practical necessity as well as profitable to carry accessories along with your line in selling to service stations? A. Part of the business, yes, sir.

Q. It is part of the service station business and therefore (2869) anyone who is going to supply tires to them has to supply accessories, too? A. Yes, sir.

* * *

Redirect examination by Mr. Dias:

Q. Mr. Gehrke, is the Berry Tire Company the only Dunlop distributor in this town? A. Yes, sir.

Q. How about Auto-Lite batteries? A. Auto-Lite batteries, we are one of a hundred.

Q. You mentioned that you first sold William Yucas. What type of station does he have? Is he a leased or contract station? A. His station he owns outright. It is not leased or contract.

* * *

Q. How about Vince Allen? A. I believe that is his own station.

Q. A contract station? A. Yes, I believe so.

* * *

(2870) *By Mr. Dias:*

Q. You mentioned pickups from a store. What did you mean by that? A. Nearby dealers who are requested to get the products that we handle come in and pick them up.

Q. What do you mean "requested to get the products"? A. If their customer demands an Auto-Lite battery or (2871) Dunlop tire and we are the nearest source of supply, they come in and get them.

Q. Arthur Hull, did you say you recollected Arthur Hull? A. Yes, sir.

Q. Is that the type business you do with him? A. About 90 percent of it; yes, sir.

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(2881) ARTHUR EDELSON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

* * * * *

(2882). *Direct examination by Mr. Dias*:

Q. Will you state your name and business address? A. My name is Arthur Edelson.

Q. And your business address? A. 6208 Cottage Grove Avenue.

Q. What is the name of your company? A. The name of the company is J. E. Auto Supply Company, Incorporated.

Q. How long have you been with that company? A. Approximately 30 to 32 years.

Q. What is your position in the company? A. President of the company.

Q. How long have you been president? A. Since '38.

Q. Since '38? (2883) A. 1938. Approximately '38.

Q. When was the company founded? A. The company was founded, it will be 38 years on July 6, by a brother, Joseph Edelson.

Q. As President what are your duties? A. Purchasing agent, I do the buying, and I have my accounts that I contact, such as jobbers and dealers. Originally I was a salesman calling on the trade, originally.

Q. For how many years did you do that? A. I called on the trade approximately ten years. I was outside man.

Q. When was that? A. I would say about from 1927 to about, I would say, '37. Somewhere in there. Or '36.

Q. Since then you have served as President I believe. A. That's right. And I still call on trade.

Q. What type trade do you solicit? That is, your company? A. All kinds. Jobbers, gas stations, garages, car dealers, chain stores, jobbers.

Q. Can you give us some idea of the percentage of business that you do with each class of customer? A. Well I think that we—this is in round figures—I think our gas station business is I would say today about 40 percent. At one time it was 75.

Q. What type merchandise do you handle? (2884) A. We carry all name brands. All advertised lines. We are DuPont distributors, we are Champion sparkplug distributors, we are Auto-Lite distributors, and at one time we used to have the B. F. Goodrich Company make our inner tubes for us. That is going back to 1930. Under the name of State Line. When they took over the Miller Rubber Company.

Q. Do you handle tires? A. We don't handle tires today. At one time, years back, we did.

* * *

By Mr. Dias:

Q. How about tubes? A. We handle inner tubes today.

Q. What make? A. Made by Durkee-Atwood. They are at Minneapolis, Minnesota.

Q. Do you handle fan belts? A. Yes. We are distributors for Gates Rubber Company.

Q. Radiator hose? A. Radiator hose, fan belts, windshield hose. We handle Van Cleve tape.

(2855) Q. How about filters? A. We are Fram distributors.

Q. Do you handle chemicals and oil? A. We handle the Valvoline line oils, and we have lines such as we are

distributors for DuPont, which I mentioned previously, and we handle Caseite and Gumout, and we handle the Permatex line. We have maybe 25 lines of chemicals, factories, all name brands.

Q. What is your sales territory? A. We cover Chicago and Whiting, Hammond, Gary, East Chicago, Joliet, and we ship to several different dealers that we have.

Q. Do you mean the entire city of Chicago? A. Our heaviest is south. Our concentration is on the south side. South of Madison Street.

Q. Do you employ salesmen? A. Yes, we do.

Q. How many do you have? A. With us brothers there are 7 of us.

Q. Seven salesmen? A. Yes, with us boys.

Q. How are your salesmen compensated? Salaried or commissioned? A. We give them a car expense every week and we give them commission. We watch their sales every month. What they (2886) bring in. If they have a steady increase over a three or four month period, we give them a raise and at the end of the year we see what their volume is and we—it is a salary basis.

Q. In your sales area are there any Texaco and Conoco stations? A. Yes, there is.

Q. Do you have any idea of how many Texaco stations are in your sales area? A. I wouldn't be able to give you accurate, but I imagine there are a hundred gas stations or 150 or 200 somewhere south of Madison Street, Texaco and Conoco.

Q. Texaco and Conoco? A. Yes. Maybe 250. I don't know exactly. I never studied it.

Q. Are there more Texaco than Conoco? A. That is correct.

Q. How many of that roughly— A. I think there are about anywhere from 25 to 50 to every Conoco.

Q. Do you call on those stations regularly? A. Yes, we do. Our men call on all stations every week, promptly.

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(2887) *By Mr. Dias:*

Q. Are you able to sell to these Texaco stations? A.

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* * *

By Mr. Dias:

Q. Will you restate your answer please? A. You see, it is not—we are not able to go in and sell a Texaco service station.

* * *

Hearing Examiner Kolb: Read the last question to the witness.

(2888) (Question read.)

A. At the present time, very little.

By Mr. Dias:

Q. How about the Conoco stations? A. Very little.

Q. Do you sell anything at all to the Texaco stations? A. Yes.

Q. What type produce do you sell to them? A. We have a—the merchandise we have we can sell them every produce if we are able. Let's put it that way.

Q. That is the point. Are you able? A. No.

Mr. Royall: Wait a minute. I object to the comment on that. I object to counsel's comment.

The Witness: We are limited.

Mr. Royall: Wait a minute.

Hearing Examiner Kolb: I will let the witness answer it. Go ahead.

A. Our sales are limited to a company-owned, Texaco-owned station that is leased. A lessee.

By Mr. Dias:

Q. Do you sell any produce to any Texaco station? A. We are limited to what products we can sell.

(2889) Q. But you do sell some? A. Yes, sir.

Q. What type produce do you sell? Do you sell tubes? A. No, we are not able to sell tubes only under cover.

Q. Do you sell batteries?

Mr. Royall: I move to strike.

Hearing Examiner Kolb: Motion denied.

By Mr. Dias:

Q. Do you sell batteries to those stations? A. We are able to sell batteries if it is 6:00 o'clock at night and the man can't get his supplier.

Mr. Royall: I move to strike.

The Witness: That is a Goodrich supplier.

Hearing Examiner Kolb: Motion denied.

By Mr. Dias:

Q. Do you sell filters? A. That is likewise; I mean the same answer to that.

Mr. Royall: Move to strike.

Hearing Examiner Kolb: Motion denied.

By Mr. Dias:

Q. How about radiator hose? A. We are limited to sales of—it is a matter of urgency when our sales are available to us, on a pick-up basis.

Q. Is the same true of Conoco stations? A. That is correct.

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(2890) Q. Regarding those Texaco stations that you have sold some merchandise to, do they advertise your products on the station? A. No, sir.

Q. Do they stock them?

Mr. Royall: What is the question?

Mr. Dias: Do those Texaco stations which buy his products stock them?

A. Only on an emergency basis. Our sales are limited, • • •.

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(2891) *By Mr. Dias:*

Q. Can you give us some idea of your company's annual sales from 1952 to date? A. I don't think our sales has anything pertaining to—every company has a growth, every year, I mean if they are progressive. But pertaining to what our problem is here, I don't think our sales has any bearing.

Q. Would you rather not mention your sales figures? A. That is correct. The simple reason is that—

Mr. Royall: We object to the explanation.

The Witness: For the simple reason—

Mr. Royall: We object.

(2892) Hearing Examiner Kolb: Let the witness answer.

Mr. Dias: What was the ruling?

Hearing Examiner Kolb: Let the witness explain.

The Witness: For the simple reason that, like every business, when you are not able to get business

in from a certain source, certain outlet, then you have to concentrate on other outlets. So if you are a progressive enough company you can secure more business. But I don't think my sales has anything pertaining to this.

But our sales with gas stations with the particular Texaco gas company outlets are far less. I would say it is only 25 percent or 20 percent of what they formerly were previously.

Mr. Royall: I move to strike. That was not the question, your Honor; not responsive.

The Witness: I am just giving an instance of our sales.

Hearing Examiner Kolb: Motion denied.

By Mr. Dias:

Q. When did you start selling to jobbers and other classifications—truckers, did you say? A. Jobbers—we have been selling that class of trade for 30 to 32 years.

Q. On those Texaco stations that you are able to sell, are they leased accounts or contract stations? Do you know?

(2893) Mr. Royall: Objection. What is the question?

Mr. Dias: You didn't hear it?

The Witness: The majority are leased to the Texaco Oil Company.

(Question read.)

A. They are leased stations from the Texaco Oil Company.

By Mr. Dias:

Q. Have you ever sold any—A. Pardon me. Could I have that repeated again?

Mr. Royall: We object, your Honor.

Hearing Examiner Kolb: He has the right to have it read back again.

(Question read.)

A. No. I am not able to sell them—leased stations.

Do you mean if they are leased or contract? Is that right? What do you mean by the word "contract"? They own their own ground?

By Mr. Dias:

Q. They own their own station. A. Contract. We are able to sell contract. That is the point I missed. Contract. I am just a young boy without a diploma.

Q. Have you ever sold any Texaco stations on a regular basis?

Mr. Royall: Objection.

(2894) Hearing Examiner Kolb: Overruled.

By Mr. Dias:

Q. Have you ever sold any Texaco stations on a regular basis? That is, week after week, get orders, or month after month, whenever they usually buy. Do you have any such accounts or have you had any such accounts? A. The picture has changed the last four or five years. We are not able to—

Q. Sir? A. The picture changed the last four or five years. We are not able to get regular business.

Mr. Royall: Move to strike.

Hearing Examiner Kolb: Denied.

By Mr. Dias:

Q. Do I understand that prior to that time you could sell to them on a regular basis? A. Correct.

Q. Is the same true of the Conoco stations? A. Yes, sir.

Q. Do you consider your products competitive with those of the Goodrich and Firestone companies? A. Did you say parts?

Hearing Examiner Kolb: Products.

By Mr. Dias:

Q. Do you consider your products—batteries, fan belts, hoses, filters, et cetera—are they competitive quality-wise, (2895) price-wise, et cetera? A. Very much more competitive, and more advertising.

Mr. Dias: Your witness.

Cross-examination by Mr. Barton:

Q. Mr. Edelson, in the Chicago and Northern Indiana area, you have around 1200 customers, is that right? A. Approximately.

Q. And you have seven salesmen? A. That is right.

Q. Who cover those 1200 customers? A. That is right, sir.

Q. And that includes you and your brother? A. That is right.

Q. How often do you get around to those? A. Once a week.

Q. The seven of you cover 1200 customers once a week? A. That is right.

Q. And you sell to those customers these nationally advertised Fram filters, Auto-Lite batteries, et cetera? A. That is right, sir.

Q. How many trucks do you have? A. We have two delivery trucks and we ship by parcel post and freight and different things of that type.

Q. And you have one warehouse? (2896) A. Yes, sir.

Q. One place of business? A. That is correct.

* * *

(2897) Q. They are desirable accounts, are they, in Chicago? A. I think that every station is a—

Q. The Conoco accounts are the desirable? A. As far as selling?

Q. Yes. A. If we are able to sell, yes, they would be a desirable account.

* * *

(2899) Q. Your sales have progressed from very little to better than a quarter million dollars? A. Much more than that.

Q. Much more than that? A. That is right, but our sales is changed from different outlets. I mean from class of trade, like our gas station business today is only 25 percent of what it was previously, due to the fact that we are not able to sell all types and kinds of gas stations.

Q. Twenty-five percent of what? A. Of our sales, of what it was previously.

Q. In other words, sometime past you had lots smaller sales but the gas sales were a bigger percentage of that? A. No. Our sales were greater to gas stations five years (2900) previous than they are today.

Q. But your total sales were less? A. Our total sales were less. What do you mean our total sales? From gas stations?

Q. From the overall sales of your business? A. Our overall picture has nothing to do with the gas stations.

Q. Wait a minute. Your overall sales were less, weren't they, five years ago? A. That is only growth of the business what you are asking now. It is pertaining to gas stations. That is the question that is here.

Q. I am asking you about your business. A. In growth, yes; in growth, yes.

Q. You are listed in the telephone directory under the heading "Automobile Supplies and Parts, Wholesale and" — A. Wholesale and auto supplies. Manufacturers' distributors.

Q. You are about one of more than 600 such firms listed in the telephone directory, aren't you? A. There is a different classification. There's jobbers and distributors.

Q. There are about 700 names on four pages of the telephone directory under your listing, aren't there? A. If you take the Red Book you will find a great many retailers are listed as jobbers. Actually, jobbers are not (2901) distributors. So far as the Red Book it is very misleading.

Q. You have— A. Champion spark plug only have approximately eight distributors in the city of Chicago.

Q. You are one of them? A. That is right, sir. And Auto-Lite—

Q. All the other seven are competitors of yours, is that right? A. They are very good competitors of mine.

Q. And all of the AC Spark Plug distributors are competitors of yours? A. That is correct.

Q. And all of the producers of—all of the distributors of the manufacturers of filters that are sold here are competitors of yours, aren't they? A. There is no such word today as "competitor." A man goes out and works and handles the advertised lines and he can get the business. Good competition is all right with me. We get our business on merit. That is the way we built our business, on honesty and merit.

There is only one thing else—

Q. That is all. You answered my question. A. All right.

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(2902) *Cross-examination by Mr. Royall:*

Q. Your territory is even larger than the City of Chicago, isn't it, that you cover? A. Right, sir.

Q. You cover all of greater Chicago and perhaps some outside, don't you? A. Correct, sir.

Q. And that has grown, the area covered has grown over the years, hasn't it, expanded? A. Like every business that has growth, but in different fields.

Q. Like every business that has growth you expanded over the years, you have taken on a great variety of lines, haven't you? A. Now, I know you are trying to make the impression or get the impression that I am—

Hearing Examiner Kolb: Just answer the question.

By Mr. Royall:

Q. I am trying to get the facts. A. It has no bearing on our decrease in business with gas stations; our growth. If we are able to sell gas stations—

Hearing Examiner Kolb: Let Mr. Dias argue this. Don't argue the case. Just answer the questions.

By Mr. Royall:

Q. I am not asking you whether it is relevant or not or the (2903) proper question. The Court will have to rule on that.

Hearing Examiner Kolb: Just ask the question.

By Mr. Royall:

Q. I just want to ask you the question. You have taken on additional lines, haven't you? A. Right, sir.

Q. And you are encountering competition all the time, competitors in those lines or similar lines? A. Some good competition and some dirty competition. Let's put it that way.

Q. But you are encountering competition? A. Yes, sir.

Q. And the number of your competitors are increasing all the time? A. Yes, sir; good and bad.

Q. And are you pretty well familiar with all that territory you cover? A. Well, I have a fairly good knowledge. I will do the best I can.

Q. And you get around all of it one time or another, don't you? A. That is right. But time changes, in certain territories, like different operators.

Q. I realize that. But you still keep fully in touch with it, do you not? (2904) A. That is right, as best I can. I am limited to my strength and ability.

Q. Let me ask you about some specific Texas stations. My inquiry is merely if you sell these stations. A. Yes, sir.

Q. Barney & Harolds— A. 103 Rhodes?

Q. Yes. A. Right.

Q. You sell. And I believe you call on them every week? A. Correct.

Q. And their business is pretty well divided between you and three other jobbers, isn't it? A. It is not divided well. I would say, as long as you asked that question, we get what is left of what the Goodrich distributor gets.

Q. You don't get as much as you would like to? A. We could get it if we wouldn't have the restriction there.

Mr. Royall: We move to strike that.

Hearing Examiner Kolb: Motion denied.

By Mr. Royall:

Q. You try to get—I mean you do get a part of that business? A. We try.

Q. You do get it, don't you? A. We try to get it.

(2905) Q. Don't you get business from them? A. We get what we are able to sneak from them, from the Texaco Company.

Q. What kind of a station is that? Is it leased or owned? A. I believe that the Texaco Oil Company leases it from a private party and that in turn is leased to Harolds.

Well, there are two—there are some Texaco-owned and some they lease from them.

Q. It is leased by the Texas Company? A. Yes. It is subleased to the operator.

Q. Do you know John Benson's station? A. 79th and Paxton?

Q. That is right. You know that, do you not? A. Yes, sir.

Q. And you sell them Westinghouse light bulbs, sealed beams, Fram filters, and waxes, do you not? A. Our sales are limited to there, too.

Q. But you do sell them? A. Whatever is left we get.

Q. And you have been selling them steadily for ten months at least, haven't you? A. Since he has been there. He has been a new operator.

Q. That is the same— A. Pardon me. We didn't get the original order.

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(2906) *By Mr. Royall:*

Q. That is also a station leased by the Texas Company to the operator, isn't it? A. Right, sir.

Q. Do you know Emil Biergyenudek? A. Where is he located?

Q. At 120th and Halsted. A. He calls that—is that a Mills service station?

Q. Yes. A. Yes.

Q. You know that? A. Yes, sir; I know them all.

Q. That is also a station leased by the— A. I believe it is, I am not positive about it.

Q. (Continuing) —Texas Company. You have been selling them Zerone and Zerex for two years, haven't you? (2907) A. Our sales there is limited on antifreeze as well as any supplies.

* * * *

By Mr. Royall:

Q. Do you sell them both? A. It is limited.

Q. Do you sell them both? A. Maybe a case of each.

Q. Answer my question. A. In emergency, yes. In emergency, yes.

Q. And you have been selling them regularly for two years, haven't you? A. I would say approximately, somewhere around there.

Q. Do you know Gerald Carlton? A. 95th and Bell?

Q. That is right. And that also is a leased station, isn't it? A. That is right.

Q. And you have been selling them Auto-Lite for ten years, have you not? A. Not exactly ten years; on emergency only.

(2908) Q. Haven't you been selling them for ten years? A. On emergency, yes.

Q. And you have been selling them Fram filters for ten years? A. A limited amount.

Q. But you have been selling them for ten years? A. A limited amount.

Q. Answer my question, please.

Hearing Examiner Kolb: He answered the question.

By Mr. Royall:

Q. For ten years?

Hearing Examiner Kolb: He said he sold them.
Mr. Royall: He hasn't answered that.

A. We have sold them for ten years. Our sales are limited to them.

By Mr. Royall:

Q. Have you sold them sealed beams for ten years? A. Now and then.

Q. Do you know Henderson Carr's station? A. Henderson?

Q. At 56th and South Michigan. A. I know it exactly. I used to sell the station four or five years ago but I have not been able to sell them today. We were pushed out of there.

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(2909) *By Mr. Royall:*

Q. My question is, have you been selling them? A. No, we haven't sold them in the last five years.

Q. Haven't you sold them Prestone for ten years? A. No, sir.

Q. How long have you sold them Prestone? A. I haven't been able to sell them anything for the past five years. Previous to that I sold them.

Q. Have you been selling— A. Previous operator.

Q. Have you been selling Auto-Lite and spark plugs for ten years? A. Have we been selling them?

Q. Yes. A. Have we been selling to a certain party or have we been selling them?

Q. Have you been selling Henderson Carr? A. We haven't been able to sell them for the past five years. Previous we sold that station.

Q. You sold them back as far as ten years? (2910) A. Well, I wouldn't take the last five years.

Q. You sold them for the five years previous to that, you say? A. If it was the same operator. If it was the same operator, I can't keep up with some of those operators.

Q. Where does he get his Prestone that he carries now? A. I don't know.

Q. Others sell Prestone besides you, do they? A. I think—do you want to know where he gets his Prestone? He gets it from a Goodrich distributor: from Gardner and Kinsley, or Lambie, where all the business goes, by force.

Mr. Royall: Your Honor, the record shows that that is not a sponsored product.

By Mr. Royall:

Q. Where does he get his Auto-Lite spark plugs from? A. Pardon me. You have a Goodrich distributor who is a Prestone distributor. Gardner and Kinsley. That is one of your distributors for Texaco Oil Company.

Q. Not for Texas Oil Company? A. He is a distributor. He handles your "PT" and also Prestone. He is a distributor. He is the one selling it to him.

Q. Who does Carr buy his Auto-Lite spark plugs from? A. He doesn't buy them from J & E Auto Supply. We haven't (2911) been able to sell them for the past five years.

Q. Do you know who he buys them from? A. No, sir.

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(2912) *By Mr. Royall:*

Q. How well do you know Wally Cohen's station? A. I never met the man.

Q. I know, but you have seen the station? A. I passed by but never been in the station.

Q. That is a Texas station, isn't it? Texas outlet? A. I presume it is. I don't call on that trade. One of our men calls on it.

* * *

A. I don't call on the customer. One of our salesmen calls on him. I am not familiar with the stop. I know that our sales are limited and we do deliver to the man. I am not familiar with it.

I believe the man has only been there a year. Not quite a year.

* * *

Q. * * * I will ask you if he does not advertise publicly at (2913) his station at least three brands which I will name that are not Goodrich brands, and they are as follows— A. They really hand-picked them.

Q. A. C. sparkplugs? A. I wouldn't know.

Q. Universal batteries? A. I wouldn't know.

Q. And Bardahl? A. I wouldn't know.

Q. I believe you testified that the Texas station did not advertise products except those under this Goodrich arrangement. You don't know that is true as to all the stations, do you? A. Pardon me. Say that over again.

Q. What did you say about Texas not advertising, about the Texas stations not advertising? A. I didn't say anything about Texas not advertising. I say we handle much more advertised products than Texas.

Q. Do you know Chuck's Evergreen Texaco station? A. Chuck's Evergreen?

Q. 103rd and Western. A. We don't sell them. Yes, I know where it is. It is on the northwest corner.

Q. I will ask you to reflect on that a minute. Don't you sell them regularly? (2914) A. I am not able to sell them.

Q. What? A. I am not able to sell them.

Q. You don't sell them? A. No. I am not able to sell them. I try.

Q. Do you know Charles Curletti? A. Charles Curletti? Where is he located?

Q. At 87th and Loomis. A. Yes, sir. That is John Caveni was there previously. That is on the southwest corner.

Q. That is a leased station too, is it not? A. Correct.

Q. And he buys more than 50 percent or at least 50 percent of his entire "TBA" line from you, does he not?

Mr. Dias: I object to that.

The Witness: No, sir. I will answer that. No sir, he does not. We can, though—

By Mr. Royall:

Q. You have been selling him Gates fan belts and Zerone for two years, haven't you? A. I wouldn't say two years. It is on and off. On and off. When the pressure is not on.

Q. This station that you sell, is that a station that does not advertise any competitive products with Goodrich's line? A. I am not familiar with it. I don't know.

* * *

(2916) Q. Do you know Joe Debulski? A. Is that 11919 West 11th Street?

Q. It is 103rd and Michigan. A. Yes.

Q. That is also a leased station, is it not? A. Yes, I believe so.

Q. I will ask you if that station does not buy 25 percent of its TBA from you?

Mr. Dias: I object, your Honor. How can this man testify as to a percentage?

A. I don't know what he buys other places so how could I tell you 25 percent?

By Mr. Royall:

Q. He buys a considerable part from you, doesn't he? A. Limited?

Q. Doesn't he handle and hasn't he handled for several years AC sparkplugs, Westinghouse bulbs and sealed beams, Stant gas and radiator caps, and Zerex? A. It is possible he could have gotten through your Goodrich (2917) distributors the same products. They handle a lot of other products besides Goodrich.

Q. Doesn't he buy those from you? A. We are limited in our sales. But your Goodrich distributors that sell these Texaco stations are also pressured in to buy this other merchandise that Texaco doesn't handle.

Mr. Royall: Move to strike "pressured to buy".

The Witness: Suggested to buy. Let's put it that way.

By Mr. Royall:

Q. Do you not yourself sell him those items that I mentioned? A. Limited, sir.

* * *

Q. Do you know Benjamin Douglas? (2918) A. Is that 68th and Vincennes?

Q. 29th and South Parkway. A. Same operator. That is the same operator. He has both stations.

Q. You know him? A. Yes.

Q. That is a leased station too, isn't it? A. I am positive 68th Street is leased. I don't know about 29th. I am not sure.

Q. You sell him Gates radiator hoses and Zerex, for several years? A. Not for the past four years. Previously we did. Previously we sold them stations.

Q. I ask you if you didn't sell him some in the last few months. A. I doubt it.

Q. Do you know? A. Positively I don't know. But I don't think so. I don't think so.

Q. I will ask you if you didn't also sell him some in the spring of this year? A. If it has, it has been a few dollars. Very limited.

Q. Didn't you also sell him some in the year 19—I mean last year, 1956 and '55? A. I believe we got more business from him in 1954 and '55 (2919) than we do today. Very little today. I don't think we got $50.00 business this year.

Q. Do you know whether you sold him anything in 1955 and '56? A. In '55, yes. We got quite a bit of business.

Q. '56? A. In '56, very little. Very little.

Q. Do you know Ross D. Foreman and Marvin H. Kloster? A. 5610 Harper and 83rd and Ellis?

Q. That's right. A. They are out of there now.

Q. That is a leased station too, isn't it? A. I believe it is. If I am not mistaken.

Q. And you have been selling them for ten years? A. I believe so.

Q. For 15 years, haven't you? A. I couldn't state exactly, but it has been a great many years.

Q. Auto-Lite, Gates fan belts, Champion sparkplugs? A. Limited amount.

Q. Gates radiator hoses? A. Limited amount.

Q. And GE and Westinghouse light bulbs? A. We don't handle GE.

Q. Auto-Lite bulbs. I said GE and Westinghouse. (2920) A. Yes.

Q. And radiator caps and wax. A. We are limited on what we can sell them.

Q. Those two you have been selling over a period of some 15 years? A. Somewhere in there.

Q. Do you know Charles Goff? A. 71st and Indiana?

Q. 71st and Indiana. A. Yes.

Q. That is also a leased station? A. I believe it is.

Q. I will ask you if he doesn't buy 80 percent of his TBA from you?

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Mr. Dias: This man can't testify as to the percentage of his purchases. Your operating man can tell you that. He doesn't know.

The Witness: How do I know what he buys from the other fellow? He buys $10.00 a month from me. He must buy $100 from your Goodrich distributor. I am only getting $10.00 a month. He is only a pick-up emergency.

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(2921) *By Mr. Royall:*

Q. I will ask you if you don't sell him a vast majority of these products? A. No, sir. Limited.

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By Mr. Royall:

Q. Mr. Edelson, do you know Leon Sider? A. 67th and Jeffrey?

Q. That's right. That is also a leased station? A. Right, sir.

Q. You have been selling him Gates fan belts, AC filters, Gates radiator hoses, Auto-Lite bulbs and sealed beams, and Prestone, over a period of approximately 8 years, have you not? (2922) A. We have never sold him any Gates unless it was a special order. Your Goodrich distributor sold him Prestone and "PT." Our sales are limited.

* * *

(2924) Q. Do you know Wesley Sippel? A. Sippel?

Q. S-i-p-p-e-l. A. 107 Vincennes?

Q. 134th and Western. A. Yes. That is another one. There is a Sippel at—

Q. That is a leased station? A. I think they are brothers. Yes, I think so.

Q. His station and his brother's station have both been buying from you for about five years, haven't they? A. Within a limited amount of purchases.

Q. And the items, among the items they bought they bought Gates fan belts, Fram filters, Gates radiator hoses, Westinghouse bulbs, Badger caps and Zerex and Anco windshield blades? A. On an emergency basis, yes.

Q. They also bought spark plugs and oil filters from you? A. On an emergency basis. We could sell them more, if we were able to.

Q. As a matter of fact, you would like to sell everybody all (2925) they need in these things, wouldn't you? A. Under our setup we can sell anybody in the city of Chicago.

Q. You try to sell them all naturally do you not? A. Try?

Q. Yes. A. Well, if there is no restriction, yes, that's right.

Q. And you try to do it. That is what you would like to do. A. We can sell them if we are not stopped. If we are not stopped.

Q. Bernard Hackstra, do you know that one? A. Where is he located?

Q. And Harold Gervais. They may be operating together. I beg your pardon. Bernard Hackstra succeeded Harold Gervais—G-e-r-v-a-i-s. A. Where is he located?

Q. At 103rd and Rhodes. A. That is the two previous names that you gave me of Harold and Barney. Barney runs a Shell station at 107th and Halsted and Harold runs a Texaco. They were formerly partners at 103rd and Rhodes.

Q. And you have been selling them Zerone and Prestone for a number of years? A. Only on an emergency basis. If we have no restriction there we can sell them all their antifreeze.

Q. Emil Hudek? (2926) A. That sounds familiar.

Q. At 120th and Halsted. A. You mentioned that, 120th and Halsted, that's right.

Q. That and the previous one are also both leased stations? A. I believe he is. Our real estate department hasn't caught up with that one.

Q. And you also sell him, don't you? A. On a limited basis.

Q. William Jamison? A. Is that the one on 71st?

Q. 75th and Indiana. A. That is right. We used to sell a lot of—wait a minute. Okay. You ask a question.

Q. I will ask you if you haven't sold them regularly during the last two years? A. Very limited.

Q. Auto-Lite, AC spark plugs? A. Only on a pick-up basis.

Q. AC filters, Zerex and wax? You have sold them. A. Only on a pick-up basis. But we could do much better.

Q. Ed Madden? A. Ed Madden at 79th and Yates. Right?

Q. That's right. Is that a leased station, too? A. I believe it is. We are limited in selling.

Q. You have been selling them filters, distributor parts, (2927) Zerone and Zerex? A. We haven't sold them ten cents worth in the last three years.

Q. What? A. We haven't sold them ten cents worth in the last three years. But we could—

Q. I will ask you if you didn't sell them some in 1956? A. I doubt it. If it was on a pick-up basis—

Q. Do you know whether you did? A. I don't think so.

Q. I will ask you— A. We could sell them.

Q. Did you sell them some in 1955? A. I don't believe so. But we could sell them.

Q. I will ask you if you didn't sell them more in 1956 than in 1955? A. To who?

Q. To Ed Madden? A. We didn't sell them anything, so it couldn't be any more.

Q. Matthew Minarcin? A. Where is that?

Q. 3030 South Archer. A. 3030 South Archer?

Q. Yes. A. That is owned by a Texas gas jobber. His father owns (2928) that ground. Your Texaco oil jobber, gas jobber, owns that station. That is leased to his son or son-in-law.

Q. You sold them for ten years Gates fan belts, AC filters, GE bulbs, gas caps, Zerone and Zerex, and wax, haven't you? A. On a limited basis. But we could do better.

Q. George M. Messinger? A. 58th and Kedzie?

Q. That's right. A. Sold them for 28 years.

Q. And you have been selling them for ten? A. Been selling them sure for ten years. Since they have been in business. On a limited basis.

Q. And that is a leased station? A. That is correct.

Q. And you sell them more than half of the spark plugs he needs?

Mr. Dias: I object.

A. I doubt it. We could sell them all.

By Mr. Royall:

Q. And would like to? A. We could.

Q. Would you like to? A. We would love to. Just give us the go sign and we can do it.

Q. John F. Polivka? (2929) A. 3925 Archer Avenue. I believe he owns his own ground and he has a lease to the Texaco Oil Company. Then he in turn leases back to himself. I believe that is what the set up is. John Polivka.

Q. You know that station pretty well. A. I think so.

Q. You have been selling him for five years? A. I believe so.

Q. Exide batteries? A. We don't handle Exide. We handle only a good brand.

Q. Auto-Lite? A. Auto-Lite.

Q. Gates fan belts? A. Yes, sir.

Q. AC spark plugs? A. We handle Champion.

Q. Who handles AC? A. Your Goodrich-Texaco distributor.

Q. And a great many other people? A. I don't know who else handles it, but I know they handle them.

Q. Auto-Lite spark plugs? A. I think your Goodrich distributor and Texaco distributor handles that also.

Q. And other handle them? (2930) A. I don't know who else. I know those two handle them.

Q. Champion spark plugs? A. Champion spark plugs is handled by Gardner Kinsley also, and Lambergs and they are Goodrich and Texaco distributors.

Q. And others handle them? A. I don't know that.

Q. You handle them, don't you? A. Yes, sir.

Q. And you sell them to this man? A. We sell part to a limited place. Limited. Put it that way.

Q. And you sell Fram filters to him? A. We are limited on that.

Q. And you sell Prestone to him? A. We don't handle Prestone, but your Goodrich-Texaco distributor handles Prestone and sells them.

Q. A great many others handle it? A. I don't know that.

Q. You would recognize—look at this picture. A. Is that Polivka's place?

Q. Refresh your recollection of that (handing). A. I recognize the name. That is what they have on their check. But anything else, I recognize Texaco, Goodrich, and that is about all.

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(2931) Q. I will ask you if the station doesn't advertise Champion, Auto-Lite— A. I don't know what he advertises. All I know is that we could get more business if we were allowed to.

* * *

(2932) Q. John and Charles Supple? A. That sounds familiar. Where are they located?

Q. 99th and Vincennes—99. A. 1818?

Q. 99th Street and Vincennes. A. I think at one time we sold them. Today we don't sell them.

Q. That is a leased station? A. That's right, sir. We could sell them, if we were allowed.

Q. I will ask you if the reason you don't sell them now is because of poor service, slow delivery, and unstable prices on your part? (2933) A. We are in a position as a distributor to meet any kind of competition, and we can sell merchandise at the same price that your Goodrich distributor or Texaco distributor, we could sell at his cost to the gas station and still make a profit. We are in that position. We can sell anybody.

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By Mr. Royall:

Q. Did not this station cease business with you because of poor service, slow deliveries and unstable prices on your part? A. There is not station ever discontinued business because of our service. We have the finest service there is. We give 24-hour service.

Q. Did— A. Our prices are right and we handle all advertised products.

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(2934). Q. Tomes Auto Service? A. Archer and Crawford?

Q. Archer and Pulaski. A. I sold the man his first water bucket when he built that building.

Q. That is— A. That goes years back, 27 years ago.

Q. That is a leased station? A. I think he is dead now, deceased. His brother has it.

Q. The station is a leased station? A. I think they own the property. I don't know if they lease it to you or not?

Q. You say you have known that for a long time? A. Known what?

Q. You have known that station? A. That is correct?

Q. That is Tomes station? A. T-o-m-e-s.

Q. I ask you if you do not know that that station publicly advertises by well-lettered and readable signs, Cooper tires and Auto-Lite? A. I am not familiar with what he is advertising today, (2935) because our business is two percent of what it previously was years back.

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(2939) *By Mr. Royall:*

Q. Do you know the Archer filling station at 3040 South Archer? A. Thirty?

Q. 3040 South Archer. A. You just submitted a name previously that was 3030 Archer. I believe it is the same company.

Q. This is South Archer. A. That is South Archer, too. 3030 Archer is your Texaco and Texaco gas distributor, Matt. That is his address.

Q. What is his name? A. Matt—he leases to his son. I think now it is his son-in-law; 3030 Archer. 3040 is the same thing to my knowledge.

Q. One is 3030 and the other is 3040. A. It is the same man.

Q. Same man? A. Same man.

Q. Two stations? A. It is only one station.

Q. It is a leased station, the one at 3040, isn't it? A. He has his bulk truck pull out of 3030 and he has the gas station on the corner.

Q. The one at 3040 is a leased station? A. That is right. I think your Texaco distributor owns (2940) the ground.

Q. Haven't you been selling them for a period of ten years, antifreeze, Pyroil, Rislone, Lubite, brake fluid, auto polish, auto bulbs, house fuses, gas nozzles, tire chains, C.D. 2 Alimite, car wash, rubber plugs, AC filters, brake shoe, tire patch kits and Gates fan belts? Those are the

items which you sell? A. Some of the items, our sales are getting less and less, due to the fact of no fault of ours.

Q. You have been selling them though for ten years, haven't you? A. It is getting down to maybe $75 a year. We were getting much more business. But due to the fact of not our fault we are not getting the business today.

Q. You have been selling them for ten years, haven't you? A. Yes, sir; been selling them for 15 years.

Q. Do you know Melvin Bowden? A. Melvin?

Q. At 67th and South Chicago? A. He is out of business. The sky highway has taken him out of business.

Q. That was a leased station? A. He owned the property himself. I don't know if he leased it to Texaco or not.

Q. And you sold him? (2941) A. Only in a pick-up basis, and we are limited due to our problem of not selling him or having the correct price or the right brands.

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Q. Mr. Joseph Novak, Jr.? A. Where is that? That sounds familiar.

Q. 74th and Morgan. A. At one time I sold that station myself but I am not able to sell them not because our price is not right and the brand is not right.

Q. But because you would not extend credit? A. Well, I don't know. That isn't a good reason not to sell a man. If a man has good enough credit then he should be tickled to death to pay cash. There is no objection to (2942) that. If a man can save 15 percent paying cash, I should think he would want to pay cash. If you give me 1 percent and I will pay cash, extra.

Q. Is that a leased station? A. I am not familiar with it.

Q. Harold Puetz? A. That is 1836 West 63rd?

Q. 63rd and Honore. A. That is right. I sold his uncle. He was my first customer when he worked for a Shell gas station, and this Harold is his nephew.

Q. Is that a leased station? A. I believe it is.

Q. Mr. Edelson, you were asked what your annual sales are. And you said they were over $250,000. It is over $300,000, isn't it?

Mr. Dias: Your Honor, I object. This man doesn't feel free to mention his annual sales. I don't see that it is relevant.

Hearing Examiner Kolb: Objection overruled.

A. I am not applying for credit so I don't have to make a financial report.

By Mr. Royall:

Q. The Court said you should answer the question. A. Yes, we do.

(2943) Q. And you sell over 350,000, don't you? A. That is right.

Q. And you sell over 400,000? A. If it is a contest, yes.

Q. How much do you sell? A. I think that is a personal question.

Q. Yes, sir, but I asked you. A. I will answer that question if I could just say that our sales—

Mr. Royall: Your Honor, I object to that.

Hearing Examiner Kolb: Give it approximately.

The Witness: We do over half a million dollars worth of business.

By Mr. Royall:

Q. I believe you also testified that today your gasoline business was 40 percent of your sales, did you not? A. It is less than that.

Q. Didn't you testify to that in this Court? A. Approximately. It is less than that. It was greater.

Q. I am coming to that. You said that it was 40 percent or approximately that, didn't you? A. Somewhere in those figures.

Q. In other words, your sales to service stations at the present time are over $200,000? A. Possibly. That is peanuts to what we could do.

(2944) Q. How much did you sell, your gross sales, in 1952? Less than $150,000, didn't you? A. Our gross sales?

Q. Yes. In 1952, four years ago. A. Our sales?

Q. Yes. A. Who arrived at that figure?

Q. I am asking you. A. No.

Q. What was it, approximately? A. We did much more than that.

Q. How much? A. Much more than that.

Q. Tell me approximately. A. I think that is a personal question.

Q. I asked you, what was it, approximately, in 1952? A. Our sales in 1952?

Q. Gross sales? A. They were greater with gas stations in 1952 than—

Q. I didn't ask that. I asked gross sales. A. It was over a half million dollars, I believe.

Q. You mean it was the same then as now? A. No, sir.

Q. How much has it increased? A. I don't think it has any—

(2945) Hearing Examiner Kolb: Answer the question, if it has or has not increased, and if so what percentage.

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Hearing Examiner Kolb: Forget about the gas station business for a minute. You were asked whether or not your sales increased since 1952.

The Witness: Our business is greater today than it was then.

Hearing Examiner Kolb: By what percentage?

The Witness: I haven't got that.

Hearing Examiner Kolb: Approximately?

The Witness: I don't know.

Hearing Examiner Kolb: 100,000? 200,000?

The Witness: I just can't give you an honest (2946) answer. I can't give you an accurate answer.

By Mr. Royall:

Q. You know it has increased $150,000, don't you? A. It has increased?

Q. Within five years it has increased that much? A. I can't give you an honest answer. I mean I can't give you a correct answer.

Q. Can you give us approximately the amount? A. Approximately. I think—I don't know, anywhere from 10 to 20 percent difference in our sales; 25 percent, somewhere in there. We have records on that.

Q. Did you state that your service station gas sales were now about only one-fourth of what they were in 1952? A. They are much less than they were in 1952.

Q. How much less? A. A greater amount.

Q. You said 25 percent of that, didn't you? A. I think our gas sales today are only anywhere from 25 to 40 percent of what they previously were.

Q. You said 25 percent? A. Somewhere around there, using round figures.

Q. Twenty-five percent? A. Somewhere around there.

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Arthur Edelson, for Commission—Redirect

(2948) *Cross-examination by Mr. Barton*:

Q. Mr. Edelson, you are familiar with Ed Bekall, at 2634 West 63rd? A. 2634? That is Talbot, 63rd and Talbot? Yes.

Q. They are a customer of yours? A. Very little.

Q. They are a customer, though? A. I don't think they bought $10 worth in the past year.

Q. And you are familiar with Betz and Betz, Conoco, 419 East 83rd? A. Yes, we are.

(2949) Q. And they are a customer of yours? A. Yes.

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Redirect examination by Mr. Dias:

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Q. My question, Mr. Edelson: Do any of those stations which were named by respondents' counsel purchase your batteries? Do you remember? A. A great many gas stations, especially we will include his, will buy batteries from any distributor because of the fact when the bulk plant or their supplier, like Goodrich, or where the supplier is closed after five or five-thirty, they will have to make a pickup to accommodate their customer. So naturally they will buy batteries from someone else. But more on a fill-in basis.

(2950) Q. You stated that you took on additional lines. What do you mean by that? What additional lines did you take on? A. Like every company when your sales decrease, you add more advertised lines. You bring in different products in the picture.

Q. You were talking of additional products? A. Products that we have. And we go into a different outlet, outlets to sell, when we have pressure from other outlets.

Q. Do you recall the station of John Benson, 79th and Paxton, that you were asked about on cross-examination? A. Yes.

Q. Do you know what kind of station that is? A. I think that has two pits if I am not mistaken. It is on the northwest corner of 79th and—

Q. Is it a leased or contract station? A. I believe it is a leased station. He hasn't been there too long; about ten months.

Q. Ten months? A. I believe so. He mentioned that previously. I believe he is right on that.

Q. Were you able to sell him when he first opened? A. Just a fill-in afterwards.

Q. That was— A. A limited amount.

(2951) Q. What is your experience with new operators, Mr. Edelson? A. When Texaco Oil Company opens up a new gas station, such as 8600 South—

Mr. Royall: Your Honor, we object to the question.

Hearing Examiner Kolb: Overruled.

A. (continuing) When Texaco opens up a gas station, a new gas station, they have a set package of equipment, supplies, and orders taken by the Texaco representative. And if it is a South Side station that order is placed through two of Texaco combination Goodrich distributors on Texaco's request.

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(2952) Hearing Examiner Kolb: Do you know this to be a fact, Mr. Edelson?

The Witness: Yes, sir.

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By Mr. Dias:

Q. Mr. Edelson, I will ask you if the station at 3030 South Archer—I believe the name given was Minarcin—is (2953) the same as the station later mentioned to you as the Archer Filling Station at 3040 South Archer? A. I think there is a little confusion there with your address.

Q. I am reading the addresses that were given to you. A. That gas station there is on a corner, and upstairs is an apartment. And a man that owns this ground and who also is a gasoline distributor, whose name is Matt—I can't pronounce his last name—he pulls his truck there. It is right along the Texaco plant. It is this side of the bridge. And I think that that dual address is the same thing because there is only three doors. You couldn't have two gas stations within four street numbers, houses, because it just doesn't—your drives, your frontage on a gas station is, say, 75 or 100 foot frontage.

So if you had 3030, 3032, 3034, that would be 100 feet and would only leave 25 feet so there couldn't be another gas station there. So I think they are both the same people. I think that that address, there are two conflicting addresses, and they belong to one another.

Mr. Dias: That is all, your Honor.

Recross-examination by Mr. Royall:

Q. Mr. Edelson, you were not present at the time the Texas stations are opened, are you? (2954) A. Well, usually when we see a gas station that is put up, and it gets the glass on the door and the windows, our men are instructed to put a book with J. E. Auto Supply name on the door on a card and try to locate the builder, or try to find out who the operator is going to be. That is the first foot in the door, to find the man who is going to run it. That is the way we start off with a new station.

Q. But you are not present when that station operator makes his original arrangements of any kind, are you? A. We are not there exactly, but we try to beat the Texaco Oil Company to the punch.

Q. But you are not there at the time the arrangements are made, the original arrangements? A. No, sir, we are not there.

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By Mr. Royall:

Q. In connection with the addresses 3030 and 3040, isn't it a fact that you sold one of them as a service station and the other as a distributor? A. I have nothing to sell the distributor. He handles Texaco oil and gas. He delivers on a truck.

(2955) Q. I ask you if you did not sell to one of them as a distributor? A. The man who owns, the distributor of the oil company, at one time he operated the gas station himself. He operated it. And I sold him originally when he first started out.

Q. One final question: Of the hundred Texas service stations, approximately, that you said you were familiar with, if 56 of them do not buy Auto-Lite batteries? A. I am not able to give you that account but if it is a company-owned I believe it is all fill-in.

Mr. Royall: That is all I care to ask him.

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Jim Abernethy, for Commission—Direct

(2956) JIM ABERNETHY was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your name and address, Mr. Abernethy? A. Jim Abernethy, Roselle, Illinois.

Q. And your business address? A. 6415 Bosworth; Berry Tire.

Q. For whom do you work? A. Berry Tire.

Q. How long have you been with Berry? A. Eleven years.

Q. In what capacity? A. Salesman.

Q. Are you a full-time employee? A. Yes, sir.

Q. Will you please state the territory that you cover for Berry? (2957) A. On the east it would be the limits of Chicago; west, Crystal Lake; on the north, Wheeling; and on the south it would be Higgins Road—no, Wheaton. I go as far as Wheaton and Glen Ellyn.

Q. In the course of your business do you attempt to sell all the products of the Berry Tire Company? A. That is right.

Q. Are there any Texaco and Conoco stations in your trade area or sales area? A. Yes.

Q. Can you give us some idea of the number of Texaco stations? A. Well, I would just be guessing there. I sell six of them. I do business with six, or have done.

Q. You do business with about six? A. Yes.

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Q. You sell to six Texaco stations? Have you ever called on more than six? A. Yes.

(2958) Q. Do you know how many others you have called upon? A. Well, not too many. I haven't had too much success calling on them.

Q. Within the last year how many have you called upon? A. I wouldn't—a couple I would say.

Q. Couple more than the six? A. That is right.

Q. Then you were not able to sell to them? A. That's right.

Q. These six Texaco stations that purchase from you, what products do they buy? A. Tires, batteries, spark plugs, automobile accessories—sealed beams and so forth.

Q. Your full line, in other words? A. That is right.

Q. Each of the six buy your full line? A. No.

Q. Of the six, how many buy your full line? A. I would say three.

Q. Three of the six buy your full line? A. Yes.

Q. Are those— A. That is at the present time.

Q. Has that condition been so over the past year or two years? (2959) A. No. I have done a little better than that. It is in the past year that I have lost some of that business.

Q. Which business was it that you lost? The three that you are selling now or the other three of the six that you are not selling the full line? A. Bill's Texaco, and Glenview.

Q. In other words, the three that you are selling the full line to, is it your testimony that they are not buying as much of your full line? A. No, I wouldn't say that. These are not company leased stations.

Q. They are not, you say? A. No. I mean where the lease isn't direct. That is my observation of it.

Q. Then it is your testimony that it is the other three of the six you sell to that you have lost business? A. That is right.

Q. What do you sell to those other three, if anything? A. Prestone, take-off tires.

Q. Will you describe take-off tires? A. In other words, a new car, where a customer wants white sidewalls, we make a deal with the car dealer. We take off the original equipment, black tires, and furnish them whites. In other words, we take in the black tires and we call them take-offs.

(2960) Q. You started to mention Bill's Texaco. Do they purchase from you? A. I haven't had any business out of them, no, in I would say 90 days.

Q. Is that unusual, a 90-day period? A. Well, we were just pushed out of there.

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By Mr. Dias:

Q. Prior to that period what were you selling there? A. Tires, batteries, recaps, and some accessories.

Q. How recently were you able to sell them the full line? A. Up until about 90 days ago.

Q. How long had you been selling them that full line? A. I would say a couple of years; that is roughly.

Q. How often do you call on your accounts? A. Most of them about once a week.

Q. Do you still call on Bill's Texaco once a week? A. No. My calls are not as frequent.

Q. When did you start cutting down on your number of calls? (2961) A. After he made a deal with Goodrich direct.

Q. Can you cite any other instance similar to Bill's Texaco? A. Well, it has been my experience, in any of these new company-owned setups, I don't know, there is a fear there someplace, they just say they can't handle anything but the company line. And I haven't had too much success selling them. So I haven't spent too much time with new company-owned setups.

Mr. Royall: Your Honor, object.

Hearing Examiner Kolb: Reference to the word "fear" will be stricken.

Is that what you want?

Mr. Royall: Yes, sir. And also the answer is not responsive. That is the principal thing.

Hearing Examiner Kolb: I will overrule that. I will strike the word "fear".

By Mr. Dias:

Q. Which of the three stations buy your products? A. Allen's Service Station, in Glen Ellyn.

Q. And the other two? A. Cumberland Service Station, DesPlaines; and—

Q. And the next one? A. Alberding; Park Ridge. And I do some business with Busse Texaco Station.

Q. You say you do some business with Busse? (2962) A. That is right.

Q. How much business do you do with Busse? A. I have sold him some Prestone and some take-off tires.

Q. Allen's Service, is that a leased or contract station? A. Contract station.

Q. How about Cumberland? A. That is a contract station.

Q. How about Alberding? A. That is contract station, to my knowledge.

Q. What about Busse? A. Busse is a leased.

Q. Have you ever sold anything else to Busse, other than this Prestone and— A. I used to sell him some tires. I sold him a jag of Dunlops about two years ago, 50 or 60 of them.

Q. How long ago? A. About a year ago last May; somewhere in that period.

Q. Were they all take-offs? A. No, those were new.

Q. New Dunlops? A. Yes, we had a special on Dunlops in our 5-ply.

Q. Those are four stations. There are two others. Can you give us some information about the other two? I am sorry, that is five. There is one other. You gave us Bill's, Allen— A. L&L, Arlington Heights.

(2963) Q. What has been your experience with L&L? Do you sell them? A. They buy a line.

Q. The full line? A. Yes, that is a contract station.

Q. These stations that buy your full line, do they stock them openly? A. Yes, that is right.

Q. Do they advertise them? A. I would say so.

Q. In and about the station? A. Yes.

Q. Do each of these stations buy your batteries? A. There was four of them buying batteries.

Q. Four of the six do buy your batteries? A. They did. I used to sell Bill's Texaco batteries, but I don't anymore.

Q. How about Allen's Service? A. I sell him the line.

Q. You sell them now? A. Yes.

Q. And the same is true of Cumberland? A. No. That is tires and accessories in Cumberland. I never did sell him batteries.

Q. How about Alberding? A. Batteries and tires and accessories.

(2964) Q. Do you look for new stations in your sales territory, Mr. Abernethy? A. Not too seriously. I am not a kid anymore.

Mr. Dias: That is all.

Cross-examination by Mr. Royall:

Q. Mr. Abernethy, I believe you say you called on eight stations and sell six of them? A. Yes.

Q. That is eight Texas stations? A. Yes.

Q. You stated about some of these stations being not leased. I am not suggesting that you are stating anything you don't think is correct but may I ask you to give fur-

ther consideration to it. Isn't it a fact that the Allen station is a leased station? A. That I couldn't tell you. It might be.

Q. And isn't it a fact that the Alberding station is a leased station? A. Well, there is a lease in there. I thought there was a lease through a different party than Texaco. I wouldn't be an authority on that.

Q. And that same thing would be true on the Busse station? That is a leased station?

Mr. Dias: He testified to that.

(2965) The Witness: Yes, sir. I didn't think Alberding—

(2966) *By Mr. Royall:*

Q. There are two that I can't identify here. One of them is Cumberland. What is the Cumberland station? A. It is on Northwest Highway.

Q. Is there any other name? A. No. It is a Busse, too. It is a brother to this Busse that is up in Mount Prospect.

Q. That would be your leased station too, wouldn't it? A. Not direct. They own—his mother owns the property.

Q. What is the address? A. Cumberland. Des Plaines, Illinois.

Q. In that case the mother of the operator owns the land? A. That is what I understand.

Q. And leases it to Texas, and Texas leases it back? A. It could be.

Q. That is a leased station, but the point you make is that the mother owns the land.

Let me ask you about the L&L station. Can you identify that? A. That is in Arlington Heights. It is a little station. L&L. They buy through one of your jobbers, I think, they get their supply.

Q. Supplies? A. I mean their gasoline through one of your jobbers?

Q. It wouldn't be a direct sale of Texas gasoline? (2967) A. I don't think so. It has your identification, Texaco identification.

Q. You say these stations stock the non-sponsored goods openly in most cases, and sometimes they have signs? A. On some of them. Not all of them.

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(2969) IRVING M. CHANENSON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

(2970) *Direct examination by Mr. Boyd*:

Q. Please state your full name. A. Irving Chanenson.

Q. Do you have a middle initial? A. Yes, I do. "M."

Q. What business are you connected with? A. Chanenson Tire and Supply.

Q. Where is it located and what is your relationship with it? A. The business is located at 1851 East 95th Street, and I am an equal partner. My brother and I are partners.

Q. Is that the only place of business, that one location? Or do you have any others? A. Yes, it is. The only location.

Q. What is the nature of that business? A. We are wholesale distributors of automotive supplies and equipment. We have been in business as a partnership since 1949. The business began at the end of 1946 as an individual proprietorship, of which I was the individual proprietor.

Q. Does the firm sell tires, batteries and accessories? A. Yes sir, it does.

Q. In addition to those items, what else does it sell? A. general description of the products sold. A. Actually, we sell everything that the service station (2971) or sells except gasoline.

Q. What brand of tires do you sell? A. We carry the four major brands.

Q. And they are? A. Goodyear, Firestone, U. S. Royal, and Goodrich.

Q. And batteries? A. Batteries, we carry Exide and Delco and Am-Plus—A-m-P-l-u-s.

Q. As to accessories, what line of spark plugs? A. We carry Champion, AC, and Auto-Lite.

Q. Oil filters?. A. We carry Fram, Purolator, AC, and a comparatively unknown brand called Apco.

Q. Fan belts and radiator hoses? A. We carry Gates fan belts and Voit radiator hoses.

Q. Would you supply for us some of the other products that you say you sell to service stations? A. We carry equipment—

Q. What kind of equipment? A. Wheel balancers, for example, of which we have Alemite, Stuart-Warner, Hunter, and the Hemmeter.

We carry motor analyzing equipment. King, for example, is the chief line we carry there. Motor analyzers, distributor testers and so on.

We carry compressors and service station jacks and (2972) transmission jacks of various kinds, that is the automobile type jacks and those for transmission use, various tire tools and so on.

Q. How about battery chargers? A. Battery chargers, we carry the King and Associated and Blitz.

Q. Mr. Chanenson, what is the trading area of your firm? Geographically speaking? A. It is largely the south side of Chicago in a 30-mile suburban radius. Beyond that I would like to make an additional qualifying statement.

About half of our business is sales to sub-jobbers or wagon jobbers, as they are sometimes known. They are actually small independent jobbers. If the policies the various companies have affect them, it would in turn, by reflection, affect us. And as a consequence it would enlarge the trading area to include all of metropolitan Chicago and a suburban radius of some 30 miles surrounding that.

Mr. Barton: I move to strike the part of the witness' answer having to do with the companies, as not responsive to the question, your Honor, which is "what is your trading area."

Hearing Examiner Kolb: He has explained extensive trading areas to take in the wagon-jobbers so-called. I will let the answer stand.

(2973) *By Mr. Boyd:*

Q. In addition to sub-jobbers that you sell to, Mr. Chanenson, what are the other classes of customers? A. We have three outside salesmen of our own who call on the service stations and the garages and the parts stores. That would account for, say, 50 percent to the sub-jobber, 45 percent to the dealer—

Q. Service station? A. Service station, and the car agency. And about five percent on what you might call industrial discount and off-the-street business and so on.

Q. Could you give us, Mr. Chanenson, approximately what the volume of business has been for each year 1952 through 1956? A. In 1952 about $250,000. In 1953, about $350,000. In 1954, about $400,000. In 1955 and in 1956, about $600,000.

Q. How many service stations would you say—and that is of all kinds of service stations—are doing business in your trading area? Do you have any idea along that line?

A. I would say that it would be probably 4,000 stations in that area.

Q. Do you have any idea about the number of Texaco and Conoco—give them to us separately—in the area in which you trade or sell? A. Considering the trading area in the more limited definition this time, based on the stations upon which our own salesmen (2974) call, I would say that there are probably perhaps 100 Texaco stations. Incidentally, in answer to your first question, when I gave you the figure of 4,000, it was based on a mailing piece that we sent out at one time, and probably included garages and service stations and so on. I don't know to what degree that would be accurate. I would approximate the number of Texaco stations as being perhaps 100. And the Conoco stations perhaps 35.

Q. Of the approximately 100 Texaco stations in your trading area, Mr. Chanenson, could you tell us how many you do business with? A. I would approximate the number of active accounts as being about 10 percent of that total. Perhaps about ten stations.

Q. And what is the nature of the business that you do with those stations? A. I would say it would be divided into three parts. They are full prospects for equipment, and we have successfully sold them wheel balancers and motor analyzing equipment and so on.

They are also full prospects for the class of items that might be called novelty or new items, carded merchandise like a new type of holder for a package of cigarettes that might come on a card and so on that fastens to the windshield visor, something of that general nature.

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(2975) *By Mr. Boyd:*

Q. What is the third category? A. The second category, as a matter of fact, since I showed the first one for which they are full prospects, they are partial prospects for various TBA items like oil filters and spark plugs if the price is sufficiently favorable, and which in some cases they will lose its identity when it gets on the shelf and not be completely distinctive as in the case of the third class for which there are no prospects.

Q. What are they? A. There I refer specifically to batteries; something which is very closely allied to the third class would be tires. Tires and batteries are in the class which is either impossible or extremely difficult to sell. I might subdivide the tire (2976) category a little further in saying that in some instances where it is known to the station that the acquisition costs from us on an identical product would be less, and they have a particular sale for the item, that they may order it from us.

In the case of tires, for example, say they have an order for a set of Lifesaver tires. They might order it from us and put it on the customer's car and that might be done without the knowledge of their salesmen and so on.

In the case of batteries, since the distinctive brand "Goodrich" which they are required to stock, or Firestone, as the case may be, is not available to us, we of course do not consider them prospects in that third category at all.

Mr. Barton: I move to strike the "required stock".

Mr. Royall: I move to strike the entire answer.

Hearing Examiner Kolb: Motions to strike will be denied.

Mr. Royall: Your Honor, on the additional ground—not trying to argue this— it is full of conclusions.

Hearing Examiner Kolb: I understood that when you made your objection.

By Mr. Boyd:

Q. Mr. Chanenson, the figure you gave me is that you were selling about 10 at the present time. What has been the situation prior to this time as to the number of Texaco stations (2977) that you sold to? Have you ever been more successful than this? A. Existing conditions, as far as supply and demand are concerned, have resulted in my being more successful in selling Texaco stations at the outset, when I first went into business, when there was a pronounced scarcity of tires, and as a consequence even Texaco stations were glad to get tires from whatever source they could get them.

And in the case of Conoco, until a couple of years ago the Conoco service stations were interested in selling gasoline only and it was not until a couple of years ago that the picture changes when they took an active interest in TBA products, with certain resultant policies along that line which affected our sales.

* * *

By Mr. Boyd:

Q. What brand of TBA is Conoco now interested in? A. I believe it is Goodrich, sir.

Q. Do your salesmen solicit Texaco stations in your trading area? In other words, what efforts are made by you presently to sell? (2978) A. We have, as I indicated, a very full line of automotive supplies and equipment. Our salesmen call on these stations. There is a continual culling process of salesmen who would meet with a continual lack of success with particular types of stations, which would very logically confine his activities to greener fields

until he came across an item which he felt might meet with a favorable response in those stations.

We have, for example, a new item of equipment called the Dumont oscillograph, an item which sells to the dealer for $2,705. It is a motor analyzer which is very new and very rapid. Texaco stations would be considered on a completely fresh basis as a prospect for that item.

Q. What about tires and batteries?

Mr. Royall: Wait a minute. We move to strike that answer because of the conclusion stated therein.

Hearing Examiner Kolb: Motion denied.

By Mr. Boyd:

Q. Why do you consider Texaco outlets for all of them prospects for the item you just mentioned?

Mr. Royall: Objection.

A. Anyone is a prospect unless there are factors to the contrary. Until you approach a man and point out the merits of the product and how it will benefit him and so on, you can't conclude that he is not a prospect.

Q. What is the situation on tires and batteries? (2979)

A. In connection with batteries, certain specific brands are the only kind that most of the Texaco stations can carry. Since we cannot supply those, having tried, we make no particular attempt to sell them batteries any longer.

Q. What is that—

Mr. Royall: Wait a minute. We move to strike that. How can he tell what they can buy? That is purely hearsay and conclusion. We ask your Honor that that be stricken.

Hearing Examiner Kolb: The motion will be denied.

A. May I—

By Mr. Boyd:

Q. How do you know it is Goodrich? A. May I refer to a specific—

Mr. Royall: Wait a minute. What is the question?

Mr. Boyd: He said it was Goodrich, and you were making some point of the fact as to how he would know it is Goodrich. That is what I was trying to establish, how he knew.

Mr. Barton: I didn't hear him say Goodrich.

By Mr. Boyd:

Q. What batteries did you say Texas stations had, Mr. Chanenson? A. Largely Goodrich. I believe it is Firestone in some cases.

Q. In those cases how do you know it is Goodrich and Firestone they have? A. Well, I believe that I could quote verbatim from a very recent conversation that I had with a service station—

(2980) Q. What station is it? A. I believe it is Bernie's Texaco.

Q. Where is it located? A. I believe it is at 7001 South Western, Bernie's Texaco Service.

Q. When was this? A. This conversation occurred during the month of December.

Q. What happened?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. I spoke with Bernie and indicated to him that we had sold him a wheel balancer and that from time to time we sell him various small items, but we had not been successful in selling him batteries, that we appreciated the busi-

ness we got from him but could we consider him a prospect for batteries? And he said, "No, you can't. I did have one Exide battery once." To quote him in the vernacular: "When my salesman saw it he just about flipped."

I said, "What difference does it make to you what your salesman thinks? It is a free country. You can buy. We don't ask that anybody in government or anybody else do our selling for us. If you feel that an Exide battery is a better buy than any other brand we would like to have you feel that you have the right to buy it."

He said, "Yes, but I have just a one-year lease (2981) and what are you going to do?" That was his exact quotation.

Mr. Royall: We move to strike that answer. That gets into the question of second-step hearsay. He is quoting a dealer on what a third party said to him.

We move that that answer be stricken.

Hearing Examiner Kolb: Read the answer, please.

(Answer read.)

(2982) Mr. Royall: May I add another objection? That embraces an argument and opinions, which is an additional objection.

Hearing Examiner Kolb: I think it is proper. I will overrule the objection.

Mr. Royall: Your Honor, on the basis of that answer which as I recall it was in response to a question of why he assumed the two previous answers, and since it is disclosed it has come from double hearsay, we move that the two preceding answers—I again move that they be stricken.

Hearing Examiner Kolb: The motion will be denied.

By Mr. Boyd:

Q. Mr. Chanenson, what about a Texaco station at 95th and Yates? Have you made efforts to sell them?

Mr. Barton: I object to that, your Honor.

Mr. Royall: Objection.

Hearing Examiner Kolb: What is the basis of the objection?

Mr. Barton: He is leading. The witness is his witness.

Hearing Examiner Kolb: He is pointing out a particular station. It is proper to do that rather than go all around the road trying to find it. The objection will be overruled.

By Mr. Boyd:

Q. Do you have the question? (2983) A. Yes. As a matter of fact, we made more than a usual amount of effort to sell this particular station. And if I am allowed to explain why we were unsuccessful despite it, it would tend to indicate that normal factors of more favorable price have here proven unsuccessful because of other reasons that would rule price out as a factor in buying.

Q. Give me the name of the station.

Mr. Royall: Wait a minute. We certainly move to strike that. That is an argument.

Mr. Barton: It is a speech.

Hearing Examiner Kolb: Read the answer.

(Answer read.)

Hearing Examiner Kolb: I will overrule the objection.

By Mr. Boyd:

Q. What other reason do you have reference to?

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. Adherence to company policy.

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(2984) Q. Where did you get this information?

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.
Mr. Royall: Second hearsay, your Honor.

A. This was direct conversation with the service station owner.

By Mr. Boyd:

Q. What is the name of this station? A. I cannot tell you accurately. It is the Texaco Service Station at 9[illegible]th and Yates. I could supply the information later if it is required.

Q. Tell us something about the efforts you made to sell this station? A. I approached this service station owner. I pointed out that we were located a block away from him, and that as a product of our method of operation there might be times when a customer of his might become a customer of mine, or that a price quotation might be sought from him and from me simultaneously, and that in an effort to preserve his good will that I wanted to make it possible for him to compete with me, and that I would grant him particularly favorable prices as a result. He told me that he was obliged to buy from Gardner and Kinsley, that is, he was obliged to buy all his supplies (2985) from Gardner and Kinsley, and that regardless of any prices that I could

offer or anything else, I should not consider him as a prospect.

Mr. Royall: Motion to strike.

Mr. Barton: I join in that.

Hearing Examiner Kolb: Motion denied.

By Mr. Boyd:

Q. Mr. Chanenson, with respect to Conoco stations, can you give us some specific instances of efforts to sell, and results?

Mr. Royall: Your Honor, we have a running exception to Conoco, I believe. That comes within the court's ruling.

Hearing Examiner Kolb: Running exception to what?

Mr. Royal: Any questions about Conoco.

Hearing Examiner Kolb: That is covered by our agreement.

The Witness: May I proceed?

By Mr. Boyd:

Q. Yes. A. I have in mind two particular service stations, both in Indiana.

Q. Where? A. One is called Borne's Conoco Service. It is on Calumet Avenue. The exact address—

Q. In what city? (2986) A. In the City of Hammond.

Q. Tell us about that one before you go to the next. A. There is a fellow who was among my first customers and who, over a number of years, was an excellent tire and battery account until a couple of years ago when, I say again, the Conoco Company took an active interest in the sale of TBA items. Previously their only policy was to sell essentially gasoline and they left the rest of it up to the judgment of the service station owner.

Mr. Royall: Your Honor, we move to strike on the additional ground that the latter part of his statement, which is not in response to the question and is purely a historical statement.

Hearing Examiner Kolb: The motion will be denied.

By Mr. Boyd:

Q. What TBA is in that station now. Tires and batteries? A. I believe it to be Goodrich.

Q. Will you tell us about the other Conoco station? A. In the case of Nick's Conoco, it was the same situation. In addition to many other supplies, he would purchase tires and batteries from us. That business is now going to the approved distributor, Goodrich distributor, in the area. It begins with a "G". Niemic and Gerlacky. It is spelled G-e-r-l-a-c-k-y.

Q. As I understand, you formerly sold successfully to these (2987) stations tires and batteries? A. That is true.

Q. Mr. Chanenson, do you consider the tires, batteries and accessories that you sell to be competitive merchandise to that sold by the Goodrich Company? A. Entirely so, yes.

Q. Mr. Chanenson, have any new Texaco stations opened, to your knowledge, recently in your area? Trading area? A. Yes, they have.

Q. Have you made efforts to sell those stations? New stations opened? A. Not in particular because a certain portion of the equipment—

Mr. Barton: Your Honor, that—

Hearing Examiner Kolb: Let him answer the question and then I will strike it if necessary.

By Mr. Boyd:

Q. Go ahead. A. A portion of the equipment that goes into those new stations become part of our business indirectly through an approved Goodrich distributor. I mean it is additional business that we enjoy.

Q. Who is that? A. That is the Lambie Company. Warrick of Lambie. He is a Goodrich distributor. For some of these stations he gets (2988) his Coat's Iron and Tire Man, a machine for changing tires, and the jack, and a fairly sizable amount of the original equipment that goes into a station comes to us from Warrick Lambie on a jobber-subjobber relationship.

Q. But as to tires and batteries, what is the situation?

Hearing Examiner Kolb: Wait a minute.

A. No batteries at all.

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By Mr. Boyd:

Q. What about tires? You mentioned batteries? A. Tires can be divided into two categories, whether they stock them, having purchased them from us, or whether they buy (2989) them for a specific sale. For a specific sale I would say we occasionally sell tires to a Texaco station. On a stocking basis, I would say that we never do.

Q. Mr. Chanenson, do you know what if any relationship exists between the Texas Company and the Goodrich Company with respect to TBA?

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A. Yes.

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(2991) *By Mr. Boyd*:

Q. What did the questionnaire ask for?

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A. The questionnaire desired to ascertain the quantity by brand and type of TBA material in the broader sense that was purchased by this specific station.

By Mr. Boyd:

Q. Did the request for the information give any reason for making the request? A. I do not recall with extreme accuracy. I have a personal conclusion but that may not be acceptable.

By Mr. Boyd:

Q. Have any operators of Texaco or Conoco stations ever indicated to you why they handled Goodrich?

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A. Yes, they have.

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(2993) *Cross examination by Mr. Barton*:

Q. Mr. Chanenson, I believe you started in business in 1945? A. The end of 1946.

Q. At that time your business was in the basement of your home, was it? A. That is true.

Q. Your operations were limited somewhat to the area in which you lived at that time? A. Yes. To a very large degree it consisted of places where our salesmen now call.

Q. Where was your home at that time? A. At 9601 South Merrill.

Q. And you started out as your own salesman? A. Yes.

Q. With a truck? A. With a passenger car originally.

Q. As you went around to the various service stations? A. That is correct.

Q. At that time what did you have? A. From the very outset it was tools and extension cords and things like that. Small items of equipment a service (2994) station needed.

Q. And your business has progressed from that basement of your home in 1946 through several buildings since then hasn't it? A. Yes. We presently occupy our—

Q. Where was the next place of business after the basement of your home? A. To the garage in the rear.

Q. How long were you in the garage in the rear of the home? A. About three years.

Q. That was until 1950, about? A. Yes.

Q. Where was your next place of business? A. To a small store at 79th and South Chicago, right alongside the railroad track.

Q. How long were you in the small store on— A. We were there about three months.

Q. That was in 1950? A. Yes.

Q. Where was your next place of business? A. Then we moved to a store and a half at 87th and South Chicago.

Q. And with relation to the space that you had in this new store, how much more space was there? (2995) A. About five times as much.

Q. Five times as much? A. Yes.

Q. That was three months after you got the first store? A. Yes.

Q. How long did you stay in the second store? A. We were there for about a year and a half, I believe. Then we moved to—

Q. That was to 1951, sir? Is that right? A. Yes, I believe so.

Q. Then you moved where? A. To a double store, later to become a triple store, at 96th and Jeffrey.

Q. That was how much larger than the previous place? A. At the outset it was about twice as large.

Q. Then you added another— A. Then we took a store adjacent to that.

Q. So it was three times as large? A. Yes, I would say so.

Q. That was in 1951 that you did that? A. I believe it was in December 1951 that we moved to 96th and Jeffrey.

Q. How long did you stay at 96th and Jeffrey? A. Until December of 1954.

Q. That is when you built your new building? (2996) A. That's right.

Q. Where did you build the new building? A. 1851 East 95th Street. 95th and Bennett.

Q. This was a new building which you had built for you? A. Yes.

Q. How large is it? A. It is, I would say, about two and a half times as large as our previous location.

Q. How many square feet, would you say? A. It is 11,000 square feet, including the storage area. 11,000 square feet.

Q. That is about 20,000 times as large as that basement you had in 1956, isn't it? A. Yes, that is true.

Q. Of course as your area of your store has grown you have added personnel in your business; haven't you? A. That is true.

Q. You started out in 1946 with just yourself? A. Yes.

Q. When did you add your first salesman? A. When we were on South Chicago Avenue.

Q. How many salesmen do you have now? A. We have three, but the thing which is mostly responsible for our increase in volume has been the additional sub-jobbers to whom we sell. The people who operate as we used to operate.

(2997) Q. You got a salesman in 1949. You added a salesman in 1949 to your operation, in addition to yourself, is that right? A. My brother became my partner; yes.

Q. Your brother was the first additional salesman? A. Yes.

Q. Then your partnership moved from building to building as your business progressed and you added a salesman from time to time until at the present time you have three? A. That's true.

Q. And your business was so successful in connection with your own selling that you developed the idea of selling to sub-jobbers who were in the same position as you were back in 1946, 1947, or so. Is that right? A. Yes.

Q. You started those sales to sub-jobbers at what time? A. Extremely limited contact with sub-jobbers took place when we moved to the very first store. We really didn't begin to do business with them until we moved to 87th and South Chicago Avenue.

Q. And that was in 1951 or '52? A. That is essentially correct.

Q. From that time until today you kept adding additional sub-jobbers, haven't you? A. That is correct.

Q. So that today you have how many sub-jobbers? (2998) A. About 35.

Q. And they do business all around the Chicago area? A. Yes.

Q. Principally in areas I take it where you don't call; is that right? A. It is actually interwoven in and around us to an appreciable degree. There is mutual respect for each other's customers.

Q. So you don't take theirs, and they don't take yours? A. Essentially that is so.

Q. I take it that from time to time as your business has developed you have added new products which you have carried? A. Yes.

Q. For example, you didn't handle tires at all when you were operating out of your basement? A. No.

Q. You never really had been very heavy in the tire business, had you? A. No.

Q. Compared to the rest of your business. A. I would say—No, that would not be entirely accurate. I have to qualify that. Tires and batteries both were particularly significant toward the latter part of the time when I myself was on the road. I had not only an Army (2999) ambulance as a truck but a trailer that I used to haul with the ambulance. I used to move perhaps a hundred tires a day.

Q. That is when you were on the road out of your basement? A. No, out of my garage.

Q. How many employees do you have in your store now? A. About 11.

Q. You have 11 inside employees? A. Total personnel I would say is 11. You could say 13 people altogether.

Q. Do you mean including you and your brother? A. Yes, and including the outside salesman.

Q. The assets of your business, I take it, when you were in the basement your assets were rather small. A. That's true.

Q. And today they have grown to in excess of a quarter million dollars, haven't they? A. Well, between us and the bank the building is in our name and so on. Income and expenditure are not to be confused. We have fairly sizable assets. We also have some sizable obligations.

Q. Do you mean you have a mortgage on your new building? A. That is true.

Q. Your customers, your direct customers now, as distinguished from your jobber customers, are divided among service stations and garages and new car agencies? Is that (3000) right? A. Yes, sir.

Q. Are there any other general types of customers? A. Not to say—not those that the salesmen call upon. The only other two classifications would be the sub-jobbers, and they are house accounts, and the people that come into the store who buy on a semi-retail basis or industrial discount.

Q. You do a retail business or commercial business through your store? A. To a limited extent. I would say less than five percent of our business is in that category. Of course we are not on a heavily travelled location that would be productive of foot traffic.

Q. How many garages do you sell to? A. I can't tell you with accuracy. There again it is a comparatively limited number. Our chief customers are the service stations.

Q. How about new car dealers? A. Perhaps 15.

Q. And you have four or five hundred service station customers? A. I would say about 300.

Q. And they are located all throughout the Chicago area and Indiana, I take it? A. Yes. The nucleus of each salesman's territory is the (3001) territory that we developed, my brother and I, when we were on the road, and they have been dropped or added to as time went on.

Q. As you moved your business from your basement through these other buildings to your present site, you spent more and more time in your office running the business? A. That is true.

Q. So that today you don't get out in the field very much? A. That's true.

Q. And you haven't for several years? A. That's very true.

Q. You handle Delco batteries? A. Yes.

Q. And Exide batteries? A. Yes.

Q. And Cooper tires? A. No, we do not carry them.

Q. How about Volta batteries? A. Yes, we carry some.

Q. Who makes the Volta batteries? A. That is made by the Volta Battery Company on 87th Street. I think it is 1000 East 87th Street, in Chicago, quite close to the store.

Q. It is not a very well known battery? A. It is one of the less well known brands. That's right.

(3002) Q. In the course of building up your business you have retained a substantial amount of profit in the business in order to build it up? A. Yes.

Q. And what were your 1955 sales? A. I believe it was about $600,000.

Q. And your 1956 sales have grown proportionately? A. Well, in this particular case, during this last year, they have been essentially the same.

Q. So that you roughly have come from sales of several thousand dollars in your first year to $600,000 in 1956? A. Yes.

Q. In a ten-year period? A. That's true.

Q. Of course, Mr. Chanenson, you have never been present at the time a sales presentation was made by a B. F. Goodrich territorial manager or the salesman of Lambie Company to the Texaco service station operator, have you? A. No, I was not present.

Q. And you don't know the type of advantages which they explained to the dealer would inure by handling the B. F. Goodrich line of tires and batteries.

Mr. Boyd: Object to the question. He said he wasn't present and he couldn't answer the question.

Hearing Examiner Kolb: The objection will be (3003) overruled.

A. Some of the advantages are actually self-evident. I would be the last to deny that there were not advantages.

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(3004) Q. A large number of other competitors in the Chicago area trying to sell the same service stations that you sell? A. Yes, that is also true.

Q. You are listed in the telephone directory as an automotive supply and parts manufacturer and wholesaler, aren't you? That is your listing? A. Yes. It is under that classification. Of course manufacturer is not applicable.

Q. I realize that. That is predominantly a wholesale (3005) classification? A. Yes, that is true.

Q. And there are 700 such houses in the Chicago telephone directory, aren't there? A. Yes. I haven't ascertained the number but there are a great many.

Q. That is a reasonable estimate, isn't it? A. Yes.

Q. And of course all of those seven are active to a more or less degree in canvassing the same service stations that you have been developing and canvassing for the past ten years. Is that right? A. I would agree with that.

Q. And of course in any kind of a business where there were so many of you canvassing the same service stations, somebody will get the business and somebody won't. Is that right? A. There would be a qualified answer on it.

Q. Isn't that true? A. Obviously someone will get the business, yes.

Q. And when you started selling in 1946 there were undoubtedly other people selling to some of the stations where you are now selling? A. That is true. We had to make a place for ourselves.

Q. And you made a very good place for yourselves? A. Yes.

(3006) Q. You have made a very good place for yourself in a number of service stations, haven't you? A. Yes.

Q. You have in that connection done it by handling standard brand items which you have been able to sell the service station on the advantages of handling that standard

brand item, haven't you? A. That is right. As a matter of fact, we have a policy involving giving customers what they want and influencing them where we can't. In other words, there is a purpose in carrying a multiplicity of brands. If he carries Fram filters or Goodrich tires we want to give him what he wants unless we can convince him that he should carry some other brand. But if he insists that he wants a particular brand, either we can supply it or we cannot. If we cannot because there is a captive market, then that leaves us out of the picture.

Q. Mr. Chanenson, it is just good business, and I suppose you do try to sell every service station everything that they need? A. Yes. We—

Q. There are a number of service stations with whom you do business who do buy all of their products from you, which they resell in your lines? A. I would say that—I would not take exception to that. That would be true.

(3067) Mr. Barton: That is all.

Cross-examination by Mr. Royall:

Q. Mr. Chanenson, you recounted a conversation with Mr. Bernie, I believe, did you not? A. Yes, I did.

Q. When and where was that conversation? A. The conversation took place over the telephone.

Q. When? A. In December.

Q. Of this year? A. Yes.

Q. You mean last December? A. Yes, December 1956.

Q. Did you personally talk to him? A. Yes, I did.

Q. Who is your salesman who covers that? A. Oscar Vincent.

Q. Is that the only time you talked to Bernie? A. I believe it was, yes.

Q. How long before that conversation had the representatives of the FTC been to see you about this matter, or you talked to them? A. This was on the same day.

Q. The same day? A. Yes.

(3008) Q. Did you call anybody else that day? A. Yes. I called—

Q. Do you remember the names of them? A. I called one chap in Harvey.

Q. Do you remember any others? A. Spindler's Texaco.

Q. Any others? A. I called Joe and Earl's Texaco, just around the corner from us.

Q. Any other? A. No, I do not believe so.

Q. Was anybody present at the time you made that call? A. Yes. Mr. Boyd was present.

Q. Who? A. Mr. Boyd, from the Federal Trade Commission, was present. And I told him the results of my call after they were completed.

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(3009) *By Mr. Royall:*

Q. Have you also a list of the stations which your subjobbers sell? A. No. I have just a vague, general idea of where they travel. But the people that are their customers and so on, it would obviously be information that they would like to keep to themselves.

Q. You have no information about— (3010) A. No. It is only occasionally—

Q. You have no knowledge of what Texas companies they sell, do you? A. No, I do not have such information.

Q. So the list that you have will merely include those that are sold direct? A. Yes.

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(3013) *Redirect examination by Mr. Boyd*:

Q. Mr. Chanenson, you mentioned in response to I believe Mr. Royall, that a number of the service stations bought the entire line of TBA merchandise from you. Are there any Texaco stations that do that? A. I do not believe so.

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(3014) CARL H. OLSEN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address? A. Carl H. Olsen, 6415 North Bosworth.

Q. By whom are you employed? A. Berry Tire Company.

Q. How long have you been with them? A. Approximately a year and a half.

Q. And in what capacity? A. As a salesman.

Q. What territory do you cover? A. I cover everything in the City south of Grand Avenue and west of Kedzie Avenue, including all the southwest suburbs.

Q. Are there any Texaco stations in your sales area? A. Yes, sir, there are.

Q. Do you have any idea of how many there are? A. There must be 100 to 150.

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(3015) Q. Of these 100 to 150 Texaco stations, how many do you contact? A. I might contact roughly about 15.

Q. Do you call on the same 15 regularly? A. Regularly, yes, sir.

Q. Do you call on any of the others at any time? A. I have from time to time but I haven't been able to sell any of them.

Q. About how many would you say? A. Roughly I may have called on a total of 35 or 40.

Q. Of the 15 that you call on regularly, 15 Texaco stations, are you able to sell them any TBA products? A. I sell them a few.

Q. Each of the 15 you sell a few? A. Each of the few I may sell them some TBA stuff and others that may not be included as a TBA item, such as recapping and vulcanizing.

Q. And is that true with each of the 15 you sell, you sell a little to each one? Is that correct? A. That is correct.

Q. Can you give me any idea of your volume of each one? A. The volume with most of them may not run over a couple of hundred dollars a year.

Q. A couple of hundred a year? A. That's right.

(3016) Q. You mentioned that you do recap and other type business. What in the tire, battery and accessory line do you actually sell them? A. I might sell about three out of those tires and batteries—tires, no batteries.

Q. These three that buy tires, do they buy them for stock or for fill-in? A. They buy them as they get calls for them from customers. They do not stock them.

Q. Are these tires take-offs or regulars? A. There have been take-offs and Dunlops, both.

Q. How about batteries? Do you sell any of them batteries? A. I sold one Texaco station batteries once, and never was able to sell him again.

Q. Do you know why? A. Because he said his salesman—

Mr. Royall: Objection.

Hearing Examiner Kolb: See what the answer is. Go ahead with your answer.

A. Because he said his salesman gave him a hard time afterwards. So I was never able to sell them again.

Mr. Royall: Move to strike, your Honor. It is double hearsay.

Hearing Examiner Kolb: I don't know where.

Mr. Royall: He is telling what his salesman said.

(3017) Hearing Examiner Kolb: He told him that the salesman raised a racket so he quit.

Objection overruled.

By Mr. Dias:

Q. Is that the only station where you were ever able to sell any batteries of the 15 that you called on?

Mr. Barton: I object to the form of the question, the "able" part.

Hearing Examiner Kolb: Read the question.

(Question read.)

Hearing Examiner Kolb: Overruled.

The Witness: I believe I sold one battery to one Texaco station.

By Mr. Dias:

Q. One battery? A. One battery.

Q. Have you ever called on a newly opened Texaco station? A. Yes, I have.

Q. Have you been able to sell them any TBA? A. No, sir.

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(3018) *By Mr. Dias:*

Q. How about the one that bought the one battery and you were never able to sell again? A. The name of the station was Russ' Texaco.

Q. Will you give us some idea of when that took place?

Mr. Barton: And where it is?

(3019) A. 6930 West Cermak, Berwyn, Illinois. It is approximately five months ago I would say.

By Mr. Dias:

Q. Have you ever been able to sell that station tires? A. I have sold him tires as he got orders from customers. Never for stock.

Q. Do you know why he doesn't buy for stock?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. Frankly, he just doesn't want to stock them because he didn't want to get in trouble with the Texaco Company.

By Mr. Dias:

Q. Did he tell you that? A. Yes, sir.

Mr. Royall: Move to strike.

Hearing Examiner Kolb: Establish when the conversation took place.

By Mr. Dias:

Q. Will you give us an idea? A. Approximately ten months ago.

Mr. Royall: Move to strike the answer as to those questions, your Honor.

Hearing Examiner Kolb: The motion to strike will be denied.

(3020) *By Mr. Dias:*

Q. What about accessories, Mr. Olsen? Are you able to sell any accessories to Texas stations?

Mr. Barton: Object again to the use of the word "able".

Hearing Examiner Kolb: Leave it out since he is objecting to it.

Mr. Dias: There is nothing sinister about it.

By Mr. Dias:

Q. Can you sell accessories?

Mr. Barton: Objection.

Mr. Royall: Object.

Hearing Examiner Kolb: Have you sold accessories?

The Witness: I have sold some things that Texaco Company possible does not handle.

By Mr. Dias:

Q. Such as? A. The produce Rislone, for one thing.

Q. What is that? A. That is an oil additive.

Q. Do you sell that on a stock basis? A. Yes, sir.

Q. Can you name some other products? A. Prestone antifreeze.

Q. Are there any others? (3021) A. There might be odds and ends of chemicals, such as radiator sealer, radiator conditioner, and so forth.

Q. Are all those products stocked in the stations? A. Three cans of this, four cans of that, and so forth.

Mr. Dias: That is all, your Honor.

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Cross-examination by Mr. Royall:

Q. Will you give us the names of the 15 regular customers, Texas Company customers? A. There is Russ' Texaco, Eddie and Stan.

Q. Can you give us the approximate address? A. Eddie and Stan is 400 West Madison Street, Oak Park. John's Texaco, 1201 South Fifth Avenue, Maywood. Raymond's Texaco, 22nd and North Avenue, Melrose Park. Jack and Eddy's Texaco, 6000 West 63rd Street, Chicago. Offhand I can't think of any others right now.

(3023) *By Mr. Royall:*

Q. In addition to the trade name, if you know the name of the person it would help us find him more quickly.

Hearing Examiner Kolb: He was requested to give the list.

A. I gave you Russ Texaco, Eddie and Stan, and John's.

By Mr. Royall:

Q. Raymond's? A. Bob Raymond's Texaco, I believe I gave you that. Jack and Eddy's Texaco.

Q. Do you have the full name? A. No, sir, I don't. Most of these stations that I call on just go by their first names. They usually have a name over the door.

Pete's Texaco—

Mr. Barton: Where are they?

The Witness: I believe I gave you the address on these. Jack and Eddy's, 6000 West 63rd Street.

Pete's Texaco, I don't have the last name. That is Butterfield and Route 83, Elmhurst.

(3024) Cole Brothers Texaco, 2205 South Manheim Road, Westchester.

Don Pepich, Cass and Naperville Road, Westmount.

C. & E Texaco, Wolf and Butterfield, Hillside.

Garfield Texaco, 1536 West Garfield.

M & M Texaco, Villa Park.

Tripp Service, 1st & Lake, Maywood.

And that's it.

By Mr. Royall:

Q. In the case of Russ Koskie—is that it? A. Russ—R-u-s-s.

Q. I believe you sold them Dunlop tires, Auto-Lite batteries, and additives. A. I sold him one battery.

Q. You sold him Dunlop tires? A. Yes, sir.

Q. Did you offer him a dry-charge battery when you sold him that? A. Yes, sir.

Q. Will you give another thought? Didn't you tell him you didn't have a dry-charge battery? A. No, sir.

Q. In the case of J. Saskin—he is one of those you gave? A. John Saskin. Yes, sir.

(3025) Mr. Dias: Which is that?

The Witness: I listed that as John's Service Station. His last name is Sasgen, or Saskin.

By Mr. Royall:

Q. Berry Tire Company sell him Goodyear tires; have sold him for three years? A. Who? How come we didn't?

Q. Did you? A. I don't believe I ever sold him a Goodrich tire.

Q. Goodyear tire. A. Or Goodyear tire. No, sir.

Q. The company sold him some, didn't it? A. Which company?

Q. Berry Tire Company. A. Not to my knowledge, since I have been working with Berry Tire Company.

Q. Sir? A. Not since I have been with Berry Tire Company.

Q. You didn't know about it prior to that time? A. No, sir.

Q. You have been with them a year and a half? A. Yes.

Q. You don't know about it prior to that time.

Which of these ones that you mentioned did you sell tires to? A. I have sold tires to Russ Texaco, John's Texaco, (3026) Raymond's, Jack and Eddy's, Cole Brothers, and M & M Texaco.

Q. I believe you made the statement, in answer to one of the questions by counsel for the Government, that certain stations you went to wouldn't buy products competitive with the Goodrich products. Is that right? A. That's right.

Q. Now I will ask you if you did not sell one of the products you sold—mentioned you sold—Rislone, which is competitive with MDC. A. MDC?

Q. Yes. A. I am not familiar with that product, sir.

Q. The other, Rislone, is an additive. A. Yes, sir.

Q. Oil additive? A. Yes.

Q. And the other line has a competitive oil additive? A. There are several competitive oil additives.

Q. I mean the Goodrich line has a competitive oil additive. A. I believe it has, sir.

Q. And you know also that these stations handle their competitive lines, many of them, such as Prestone? A. Yes, sir.

Q. And they have Texas PT? A. Yes, sir, they do.

(3027) Q. Did you speak of the M & M station? A. Yes, sir.

Q. Don't you know that they also carry a competitive product, Universal Batteries, and stock it? A. At one time they did.

Q. I ask you if you don't know they do it now. A. I know they don't handle the Universal Battery right now.

Q. Would you recognize that station? A. I believe I would.

Q. Is this a correct photograph of it?

Mr. Dias: I object.

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(3028) Hearing Examiner Kolb: You can ask the witness if that is the picture of the station as it appears today, if he knows.

(The document referred to was marked Respondents' Exhibit 11 for identification.)

Hearing Examiner Kolb: When was the last time you saw that station?

The Witness: It must be about a week ago today.

By Mr. Royall:

Q. Is that a picture of the station?

Hearing Examiner Kolb: Is that the condition it was in at the time you saw it?

The Witness: That's right.

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(3029) *By Mr. Royall:*

Q. I will ask you if you don't know now that they stock Universal Batteries.

Mr. Dias: I object. The sign on the window doesn't mean anything. He has already testified that he had them at one time.

By Mr. Royall:

Q. I ask you if you don't know now that they stock Universal Batteries. A. They—

Hearing Examiner Kolb: Did they have Universal Batteries there the last time you were there?

The Witness: They do not have Universal Batteries now.

By Mr. Royall:

Q. Did you call on the Feldhaus station? A. I don't believe so.

Q. Isn't that in the territory you cover? A. It may be.

Q. Have you ever seen the station? A. I don't recollect, sir.

Q. Do you know where 16th and Lombard is? (3030) A. Yes, I do.

Q. Do you know— A. I wish to retract the one statement. I believe I do recollect, I do recognize that name now. I called on them possibly once or twice.

Q. I ask you if you don't know that that station at the time of your call there had a full line of Delco Batteries. A. Yes, sir, they did.

Q. I ask you in your calls around the territory if you called on Spraatz, at 2332 Greenbay Road. A. That is not my territory, sir.

Q. That is in Evanston? A. That is not my territory.

Q. Are you familiar with that station? A. No, sir, I am not.

Q. I will ask you if in your calls on Texaco stations if you did not encounter a number which stocked Goodyear tires. A. Offhand I will say I don't ever recall seeing a Goodyear Tire in any Texaco station.

Q. I will ask you if you didn't contact a number that had Dunlop tires. A. There are none of my stations that stock any Dunlop tires.

Q. I didn't ask you that. I said the stations that you contacted, visited. Not those you sold. (3031) A. To the best of my knowledge there is no Texaco station that I have either called on or sold that stock any Dunlop tires.

* * * *

(3034) *Redirect examination by Mr. Dias:*

Q. You sold tires to John's, Bob Raymond, Bob and Eddy's, Cole Brothers, M&M, Texas. What brand tires? Dunlop? A. I would say a mixture of Dunlop and take-off tires.

Q. If I enumerate these stations can you go down the list (3035) and tell me which one?

John's, do you know what you sold him? A. John's, I believe I sold him some Dunlop tires and some seconds. Both from Dunlop and some off-brand tire.

Q. How many and when? A. Three weeks ago I sold him two second tires in an off-brand tire.

Q. And Dunlop, how many and when? A. I would say during the year 1956 I sold him a hundred dollars worth of tires that was tops.

Q. How much do your tires cost? A. Well, specifically, a 6.70 by 15 blackwall tube-tire tire will cost the dealer $14.29.

Q. That is the cheapest tire you have? A. Cheapest Dunlop.

Q. What is the most expensive tire you carry? A. We carry nylon tires which carry a list price, just guessing, for a 6.70, roughly around $40, I would say.

Q. So that if this were the cheapest tire you had, you sold a total of seven during 1956, roughly? Is that correct? A. Approximately.

Q. How about Bob Raymond? What did you sell him? A. The overall business, including everything, for 1956, I would say wouldn't have gone over $250.

(3036) Q. What kind of tires were they? A. They would be Dunlop tires in his case. That would be Dunlop tires and including recaps, snow tires.

Q. The total amount of that would be what? A. $250 overall.

Q. How about accessories? A. That is including accessories.

Q. So your total sales of TBA to Bob Raymond was $250? A. Approximately.

Q. Do you have any idea how many tires you sold to him? A. Ten or twelve tires tops.

Q. Would that be in one order? A. No, sir, spread over a period of a year.

Q. How about John's? Were those tires bought in one order or spread over? A. Spread over.

Q. What is the story on Jack and Eddy's? A. Jack and Eddy's, I have sold them quite a few tires. The exact figure may be $400 worth of tires over a period of a year.

Q. Which year? A. 1956.

Q. What kind of tires? A. Mostly all Dunlops. There may have been a few take-offs mixed in.

(3037) Q. Does that $00 figure represent tire sales or is that full TBA? A. That is full TBA.

Q. Do you sell him any batteries? A. No, sir.

Q. You do sell him accessories? A. Some spark plugs.

Q. Anything else? A. That is all I can recall selling him.

Q. Do you recall what his largest purchase of Dunlop tires was? A. At one time possibly a set of tires which would amount to around $80 to $100.

Q. A set would be four tires? A. Four.

Q. Is that the largest order you have ever sold to him in tires? A. Yes, sir.

Q. How about Cole Brothers? A. I would say possibly the case runs about the same as Jack and Eddy's.

Q. That is about $400 for the year? A. Approximately.

Q. And that $400 represents sales of tires, batteries and accessories? Does he buy batteries? (3038) A. No, sir.

Q. What was the largest order he ever placed for tires? A. At one time four tires at one time.

Q. How about M&M? A. M&M as far as tires go has been mostly a recap tire business. There may have been a few take-offs sold to him.

Q. Do you recall selling any new Dunlops to him? A. Offhand I can't say I have ever sold him any Dunlop tires.

Q. Can you give me some idea of your sales to him of the Berry TBA products? A. $500.

Q. Does he buy accessories, too? A. During the course of a year I might have sold him some odds and ends. I can't recall specifically what items. Maybe some tire patches or something of that nature.

Q. How about batteries? Did you sell any of those to him? A. I may have sold him one or two batteries.

Q. Incidentally, what is your brand of battery? A. Auto-Lite.

Q. Do you handle any other brand of batteries besides Auto-Lite? A. We handle a rebuilt battery which is strictly used for the used car trade.

Q. Do you sell Delco batteries? (3039) A. No, sir.

Mr. Dias: That is all.

Recross examination by Mr. Barton:

Q. How many service stations are in the area which you handle? A. Pardon?

Q. How many service stations are in the area? A. I wouldn't hazard a guess. In my territory?

Q. Several thousand? A. I wouldn't even hazard a guess. The way they are putting them up now you would think they were going out of style. I haven't the slightest idea. Several thousand I would say is a conservative estimate.

Q. How many do you sell to? A. I have approximately 125 customers.

Q. What was your total volume last year in sales? A. Fifty to seventy thousand dollars.

Q. $50,000? A. That is right.

Q. That is of tires, batteries and accessories? A. That is right.

Q. As well as recapping and the other things that you sell? A. That is right.

Mr. Barton: That is all.

(3040) Mr. Dias: I have nothing further.

Hearing Examiner Kolb: That is all.

(Witness excused.)

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(3041) JOHN O'KEEFE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Boyd:

Q. Please state your full name, business connection, and position. A. John O'Keefe, Chanenson Tire and Supply Company.

Q. What is your position? A. Salesman.

Q. How long have you been salesman with Chanenson? A. About one year.

Q. Had you been in the sales end of tires, batteries and accessories business prior to that time? A. Not previous to my employment with Chanenson.

Q. What products of Chanenson do you sell? A. Miscellaneous supplies, waxes, polishes, tires, batteries, accessories and so forth.

Q. What is your sales area, your sales territory? A. Part of the week—I would say a day and a half, I work the northwest suburbs of Chicago. That would take in Elgin, Roselle, Itasca, Wood Dale and Bensonville. The rest of the time I would say a three to five mile radius of our store.

(3042) Q. And that is located where? A. At 1851 East 95th Street.

Q. What classes of customers do you call on? A. Service stations only.

Q. How many Texaco outlets, Texaco stations, would you say are in your sales territory? A. In my sales territory I would judge roughly 35 stations.

Q. How many of those stations do you sell? A. Five.

Q. What efforts have been made to sell the others? A. When I first became employed at Chanenson I endeavored to sell the full line that we carry to all the stations. Not all at one time, but if I had a day or two, a little extra time, I would call on a new account, be it Texaco or otherwise.

Q. The five that you are selling now, what products are involved in the sales that you make? A. I sell them occasional equipment, maybe some sealed beams, some waxes, polishes, things strictly in the chemical lines.

Q. What about tires and batteries? A. I have never sold any tires or batteries to any of the five Texaco stations that I call on now.

Q. What about the other 30 that are in the territory? A. I can't specifically say. I have never sold them any tires or batteries.

(3043) Q. When you made that effort, when you first took over the territory, did you endeavor to do so then? A. Yes, sir.

Mr. Barton: Object.
Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. Yes, sir, I did.

By Mr. Boyd:

Q. What tire and battery lines do those stations carry when you see them? A. The tires and batteries that I saw displayed in the majority of Texaco stations were B. F. Goodrich tires and B. F. Goodrich batteries.

Q. What about these five that you call on that you sell? A. Of those five, four stock B. F. Goodrich tires and B. F. Goodrich batteries.

Q. How about the fifth? A. He is an independent and doesn't really stock any. He has three or four of various makes, manufacturers.

Q. When you say an independent, what do you mean by that? A. He owns the property and the station.

Q. Can you tell us the name of that station as well as the other four? A. Could I tell you the name?

Q. And the location? (3044) A. That station would be called Midway Service, at Route 53 and Route 20.

Q. Where abouts? A. Roselle, Illinois.

Q. And the other four? A. The other four are Joe and Earl's Texaco Service, at 89th and Stoney Island; Fleetway Service, at 85th and Stoney Island; North End Super Service, at Liberty and Dundee Streets in Elgin.

Q. Elgin, Illinois? A. Elgin, Illinois. And Stonier Texaco.

Q. Where is that located? A. At 97th and Cicero, approximately. I forget whether it is 97th or 98th Street.

Q. Of these five that you have just named, where you make sales, do you endeavor to sell them tires and batteries? A. Not any more.

Q. Why not? A. Well, when I first—

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. When I first went into these stations I asked them about getting some of their tire and battery business and they said at the time, not each of them, it amounted to that, that their source of supply, their present source of supply, was (3045) satisfactory to them, and that they didn't care to stock any of the tires or batteries that I had to sell.

Q. And what was the tire that they stocked? What brands? A. Goodrich tires and batteries?

Q. And they said the source of supply. Was there any indication of what that was?

Mr. Royall: Objection.

Hearing Examiner Kolb: The objection will be overruled.

A. No. I just happened to know who they were, being in that vicinity.

By Mr. Boyd:

Q. Who were they? A. Gardner and Kinsley, and W. H. Lambie.

Q. Mr. O'Keefe, how many Conoco stations would you say are in your sales territory? A. Fifteen or 20.

Q. Do you sell any of them? A. No.

Q. How long have you had the sales territory you now have? A. Approximately a year. Since I began working there.

Q. Did it at one time include any other area? A. Yes. For a period of about four months I went into East Chicago, Indiana, and Hammond, Indiana.

Q. Did you call on any Conoco stations there? (3046) A. I called on two Conoco stations.

Q. Who were they? A. Nick's Conoco, in East Chicago, and Osborn in Hammond.

Q. Did you sell them anything? A. Yes. I sold them some waxes, polishes, plugs.

Q. What about tires and batteries? A. No, I didn't.

Q. What tires and batteries, what line were they carrying? A. B. F. Goodrich and I believe one had some Firestone. And I forget which one.

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(3046) *Cross-examination by Mr. Royall:*

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(3049) Q. How many stations do you sell all together? A. Approximately 80.

Q. And in the territory that you cover, are there 800 or 1,000, or 1500 stations? A. There might very well be.

Q. Is it your best judgment there are about 1500? A. There could be. In my specific area?

Q. In the area that you travel? A. I wouldn't say there are that many.

Q. Maybe a thousand? A. Maybe a thousand.

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Francis Dwyer, for Commission—Direct

(3055) FRANCIS DWYER was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address, Mr. Dwyer? A. Francis Dwyer, 6415 North Bosworth.

Q. You are a salesman for the Berry Tire Company? A. That is right.

Q. How long have you been with Berry Tire Company? A. A little over 30 years.

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Q. Will you tell us the territory that you cover for the Berry Tire? A. From Lawrence Avenue north to Highwood, and from the Lake west covering Skokie, and Martin Road.

Q. Do you attempt to sell the full line of the Berry Tire Company? You don't specialize in any items? (3056) A. Well, we specialize in about eight items; eight or nine items.

Q. Who specializes? A. I specialize.

Q. What are those eight items? A. Roughly speaking I would say it was tires, recapping, tubes and truck tires and so on, and batteries, antifreeze. That is our main source of income—my main source of income.

Q. Do you sell any accessories, any of Berry accessories, or don't you bother with accessories? A. We sell quite a bit of Penray and Prestone radiator chemicals.

Q. In your sales territory are there any Texaco stations? A. Oh, I imagine there are about twenty. I couldn't say. Roughly. Roughly that is about 20.

Q. Are there any Conoco stations? A. Not very many. Conoco is not too much of a factor.

Q. Do you call on any of those 20 Texaco stations regularly? A. Yes, I do.

Q. How many of them? A. About six or seven.

Q. Have you ever called on all of them at any time? A. Oh, yes.

Q. Can you tell me roughly when? (3057) A. I stop in about once a month on stations that I do not get regular business from, to solicit recapping and vulcanizing.

Q. Do you attempt to sell them anything else in your line? A. Oh, yes.

Q. What, for example, do you try to sell them? A. Take-off tires, when we have them.

Q. Do you try to sell them Dunlop? A. Dunlop tires, Auto-Lite batteries, Prestone, take-off tires.

Q. Your full line, in other words? A. That is right.

Q. Out of the 20 you call on 6 or 7 regularly. Why is it you don't call on the remainder?

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. The reason I do not call on the others regularly, if I make 20 calls a day I have to produce so much business in order to live. I found in the majority of Texaco stations that I cannot get any business and make it worth while to call on them regularly.

Mr. Royall: Motion to strike.

Hearing Examiner Kolb: Objection overruled.

By Mr. Dias:

Q. Of these 6 or 7 that you sell regularly, what products do they buy? (3058) A. Fill-in orders at the end of the year on Prestone, recapping and vulcanizing, and take-off tires; special buys.

Q. Do any of them buy your Dunlop tires? A. Well, I would say that I got one of them that bought very regularly for quite awhile and then ceased to buy about the middle of June.

Q. Of what year? A. Last year.

Q. Who is that? A. Swifty's Texaco. I have another one, Bob's Service Station, at Winnetka.

Q. Returning to Swifty, have you ever sold to him on a regular basis? A. Oh, yes, for a number of years.

Q. Can you recall the largest annual volume of that station? A. Well, the best I can figure from our office records, in 1954, on tires and tubes and take-off tires, it was about 5,000—I think it was $5,038 in 1954; in 1955 it was $4200; in 1956, up to July 1, it was $2250; and since July 1 to January 1, he bought two truck tires for $48, small truck tires.

Q. Have you been calling on him regularly since July of 1956? A. I call on him. He lives within a mile of my house.

Q. How often do you call on him? (3059) A. I see him at least once a week. In fact, I buy my gas from him pretty regular.

* * *

(3060) Q. You mentioned Bob's. Could you give us his address? A. I am not sure, but I think it is about 190 Greenbay Road in Winnetka. The southern end of Winnetka.

Q. Do you have any sales figures on that station? A. In about '53 and '54 it ran—in '53 it ran around $3,500 and then progressively was less. Two years ago the sales went down to less than a thousand dollars.

Q. Do you have any figures on 1955? A. I would say about $800.

Q. How about 1956? A. About the same.

Q. What products do you sell to Bob's? A. Take-off tires.

Q. And batteries? A. Very few.

Q. Do you recall any purchase, or the number of purchases of batteries that he ever made? A. No, I don't. He is just fill-in orders here and there.

Q. How about Swifty on batteries? Do you ever sell him? A. None whatsoever. Well, I will take that back. I (3061) probably sold him last year. I think he bought four batteries one time from me, and then he bought I think maybe batteries all together last year.

Q. Who? A. Swifty.

Q. You sell regularly, you stated, to an additional four or five. Can you name those stations? A. A lot of it is recapping and vulcanizing. You see there has been so much changeover, mortality rate in the gas stations is about 25 percent a year, and there is an awful lot of stations and they are changing operators. There is a continuous sale of stations all the time, changing around. So it is pretty hard to say that I sold them regularly. But I would say this, that we do the vast majority of recapping and vulcanizing up in that territory of all the stations. So whether you would call recapping and vulcanizing regularly a sale, I would say yes. That would entail pretty near most of them.

Q. Do you sell those other stations any batteries or accessories? A. No, I do not.

Q. Dunlop tires? A. No.

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(3062) *By Mr. Dias:*

Q. You cited Swifty's and Bob's as instances of loss of business. Are there any others? A. No, I wouldn't cite any others.

Q. Do you call on newly-opened Texaco or Conoco stations? A. Conoco I do not. Texaco, there isn't too many new ones being opened all the time. They are changing hands. I call on them as fast as I can. But usually a Goodrich dealer is there before me.

Q. Who is the Goodrich dealer? A. Biltmore Tire calls on most of the accounts in my territory.

Q. Does Biltmore sell to any other customers in your area? A. Other than Texaco he is no competition.

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(3063) *By Mr. Dias:*

Q. Do you have any other competitors in that area? A. In what way do you mean? Goodrich tires?

Q. No. Any other competitors in your sales area. A. There are all kinds of competitors in any sales area.

Q. Are there other jobbers or distributors up that way? A. Oh, yes. Jobbers and distributors cover from time to time the whole city, the whole county. In fact, a number of counties.

Q. How do your batteries compare with the Goodrich and Firestone batteries? A. Goodrich are not manufacturers of batteries. Or Goodyear are not manufacturers. They are nothing but jobbers themselves of batteries. They are made for them by somebody else. Auto-Lite and Delco are standard equipment batteries as a whole. Practically all automobiles. There are a few other batteries in DeSoto cars and so on. So in my estimation there is no batteries on the market that are as easily sold as Auto-Lite or Delco. Price-wise they are very competitive.

Q. You have cited all the instances of loss of sale that you can recall, have you? A. Yes, I would say so. That is with the Texas Company and Goodrich.

(3064) Q. In regard to Swifty's, do you know what TBA products he carries? A. Yes, he carries Delco batteries, and he carries the rest of the line. I think it is mostly Goodrich.

Q. What about Bob's? A. Bob carries—his line is Firestone.

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Cross-examination by Mr. Barton:

Q. Mr. Dwyer, how many service stations are there in the area which you cover? A. I never counted them.

Q. How many would you say? A. I imagine there are —how many are there in the City?

Q. Some witnesses have estimated more than 4,000. A. I imagine it would be in the neighborhood of a few hundred.

Q. How many? A. A few hundred.

Q. In your whole area? A. Yes.

Q. How many customers do you have in that area? A. I have approximately—I call on about 165.

Q. Is it your testimony that you call on most of the dealers— A. I imagine there are more than a few hundred. There are (3065) probably six or seven hundred stations maybe. I have no definite idea.

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Q. You sell recapping generally to all the customers on whom you call? A. Yes.

Q. And you call on these hundred or 125 dealers whom you serve regularly and sell them recapping? That is true, isn't it? A. Yes.

Q. How often do you call on them? A. Some accounts I call on maybe every two or three months. Some accounts I call on maybe every month. Some accounts I call on

every week. And some of them I see more than once a week. There is no set time. It depends. On Standard Oil, for example, I call on them sometimes once every three months.

Q. Most of these stations that you call on are handling tires other than Dunlop tires? A. That's right.

Q. Most of these stations that you call on to sell recapping (3066) you do not sell Dunlop tires to regularly? A. That's right.

Q. Who does Swifty buy his Delco batteries from, do you know? A. I am not sure whether it is Evanston Auto or McNally.

Q. Who are the competitors of yours in that area in the sale of batteries, I take it. A. That's right. They are a jobbing house and they are within a mile of his place of business. And he does a lot of mechanical work and he is picking up parts all the time so it is convenient for him to pick up his batteries and parts from a house that is less than a mile away.

Q. I take it that these 125 customers whom you— A. I have more than that. About 160 I think I said.

Q. You have about 160 customers? A. Yes. That is, listed as regular customers.

* * *

(3067) Q. Along that line, some of them buy more than others, some go up and some go down? A. No. They are pretty steady.

Q. Does your volume stay about the same? A. Just about.

Q. About the same. A. Yes. In one respect, yes, in another respect, no. The volume this year is about the same as it was last year. Maybe a little bit less. But the unit sales are less. That is due to the increase in price of tires and due to Federal excise tax increase.

Q. That has a great effect on it? A. Oh, yes. When a tax goes up from $1.12 to $1.74, that is quite a difference in a small tire.

Q. There are changes in dealers, changes in the way the station does business, and that has some effect on the whole thing. With a change of dealer he may have a different preference. A. I didn't get that.

Q. If the fellow who runs the station changes, he may have a different preference? (3068) A. Yes. If a new dealer comes in then that is another problem.

Q. You were asked a question about what lines were carried by one or two of these stations. I believe it was Swifty's and Bob's. That is, other than your lines. How did you determine that? By what you saw in the place of business? Or the signs he carried? A. No. I never go by signs. Signs might have been put up 20 years ago and never taken down. That doesn't indicate he has the merchandise on hand.

Q. But you can tell from the stock he carries, couldn't you? A. I know what the dealers carry because—

Q. You go there and see it? A. That's right.

Q. That is what I mean. You go there and see it? A. Yes.

Q. Let me ask you about one or two of your stations, your Texas stations.

Westmore Service. You have been dealing with them for a long time. A. Westmore Service own their own lease.

Q. You have been dealing with them for a long time? A. I would say over 20 years. They own their own lease. That is entirely different. There are three different types (3069) of Texaco leases.

Q. How long have you been dealing with Sam and Jack Lipshultz? A. Sam and Jack Lipshluts, that is another station. They buy gas from Adam Miller.

Q. Is that Texaco Gas? A. They have their own lease and they own their own building and they buy from a Texaco jobber.

Q. I asked you how long you have dealing with them? A. I would say 25 years or more.

Q. How long have you been dealing with—you told about Swifty's, I believe.

How about Paul Spraatz? A. They own their own lease and their own building.

Q. How long have you been dealing with them? A. I would say 15 years.

Q. Do you know what products they carry? A. Right now? At the present time they carry Auto-Lite batteries and they do not stock tires. They pick them up as they need them. The only item that they stock is my Prestone and Auto-Lite batteries and they pick up Dunlop tires.

Q. As a matter of fact, aren't you wrong about Spraatz? Isn't his a third-party lease and not an owned-station? A. Paul Spraatz and Mrs. Johnson and a brother—I don't remember what his name is—they own the property and they own their own lease.

(3070) Q. They lease the property from Texas Company, don't they? A. No, they do not.

Q. Are you certain about that? A. I am pretty positive. They have been in the furniture business and the expressing business for 50 years I guess.

* * *

(3071) *Redirect examination by Mr. Dias:*

Q. During the course of your cross-examination you mentioned there were three types of leases. Do you know what they are? A. If I own a property and I lease from Texas Company, or I buy gas from Texas Company, usually there is an extra cent or cent and a half or half a cent

rebate, additional rebate. That is where the owner leases the station. And then there is other property where I own the property & . . I lease to Texas Company. And then there have been instances of where I own the property and I lease to Texas Company, Texas Company leases back to me, and then I lease to an individual.

There are a lot of "screwy" setup deals.

Q. Is there any difference in your ability to sell any of those stations? A. Well, he mentioned Westmore Service station. * * * He buys where and from whom he wishes to buy. There is all the difference in the world.

* * *

(3072) Q. Do you find it easier to sell to a contract station than to a lease station?

Mr. Barton: Objection.
Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. It is much easier to sell—do you mean by contract station where a man—

By Mr. Dias:

Q. Owns the property. A. There is all the difference in the world; definitely much easier.

Q. Why is that? A. Because he—

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. Because he likes to—he is independent and he likes to decide for himself whether he wants to handle Goodrich (3073) batteries, Delco batteries, or Auto-Lite batteries, or whatever make of battery he sees fit to handle. It is his judgment. On tire, it is a matter of, in our case, where

we handle Dunlop tires, we went into the Dunlop tire business many years ago with the great thought in mind of using the whitewall Dunlop as a change-over from car dealers. We are actually handlers of Goodyear, Goodrich, Firestone, Dunlop and U. S. Tires. Because by putting the whitewall Dunlop tires on U. S. automobiles we get off Firestone, Goodyear, Goodrich and others.

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Q. What do you base your references to pressure on?

(3074) Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. Pressure is a term that is pretty hard to define. Texas Company will have a very nice salesman who calls on the customers and the customers like him pretty well. With reference to Biltmore tire, in many cases I have found that the Biltmore salesman and the Texas salesman call on a dealer together. If that isn't pressure I don't know what is. That is one instance of it.

By Mr. Dias:

Q. Can you cite other instances?

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. If a station changes hands, it is always in my territory a Texaco station I am talking about, it is always a Biltmore man that is there right under the gun. Or if a new station opens up there is always a Biltmore man there first. I would call that cooperation with the Texas Company and Biltmore, or Goodrich Rubber Company, and also they designate that in the case of Bob's Service Station, sometime ago, when George Suffert—I think was the name of

the Texas District State Manager—who definitely used pressure from the word "go."

Mr. Royall: Your Honor, we object to that as purely hearsay.

(3075) Mr. Dias: We don't know whether it is hearsay.

Mr. Royall: He couldn't know.

Mr. Dias: Why couldn't he?

Mr. Royall: Let me ask him a qualifying question. Were you present at the time?

Mr. Dias: I object to the interruption. You will have cross-examination.

Mr. Royall: I move to strike, your Honor.

Hearing Examiner Kolb: Explain the knowledge that you have with reference to the last matter you spoke of.

The Witness: The dealer told me that Mr. Suffert told him he had to handle either Firestone or Goodrich products or he would cancel his lease, and his lease was cancelled for nine months.

Mr. Royall: Move to strike on the ground of double hearsay, your Honor.

Hearing Examiner Kolb: I will deny the motion to strike.

By Mr. Dias:

Q. Do you know of any other instances? When did that particular instance take place? A. That happened about two years ago. And Bob told me at the time that he said, "All right, I will buy my Goodrich tires from Bablum." He said, "No, buy them from Biltmore. It is a matter of bookkeeping, keeping track of the sales (3076) on Goodrich tires."

Bob turned around and said, "All, right, I will buy take-off tires from the Berry Tire Company." No objection. I handle Goodrich take-off tires. We sell them from 10 to 15 to 20 percent less than they can buy regular Goodrich tires from.

Mr. Royall: Motion to strike on the grounds of double hearsay.

Hearing Examiner Kolb: Was that the conversation when you were present?

The Witness: That is the conversation.

Hearing Examiner Kolb: With the owner?

The Witness: With the owner.

Mr. Royall: We object on the grounds that what the owner told him of what someone else said is hearsay.

Hearing Examiner Kolb: Objection overruled.

The Witness: So the result is that he now handles Firestone tires instead of Goodrich.

Mr. Royall: Objection. Move to strike.

Hearing Examiner Kolb: Overruled.

By Mr. Dias:

Q. Can you cite any other specific instances? A. Andy's Texaco told me definitely, about 5550 North Ashland, that he definitely was supposed to buy from Biltmore Tire.

(3077) Mr. Royall: Motion to strike, your Honor, on the grounds of hearsay.

Hearing Examiner Kolb: Denied.

By Mr. Dias:

Q. Did he say when he told him that? A. About a year ago.

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.
Mr. Royall: Motion to strike.
Hearing Examiner Kolb: Denied.

By Mr. Dias:

Q. Did you have any records or do you know what his purchases were at any time? A. His buying is very little He carries no new tires in stock. It is strictly a pickup business. The only merchandise he carries in stock is batteries, and previously for a number of years he handled my Auto-Lite batteries and he is now handling nothing but Goodrich batteries.

Mr. Dias: That is all, your Honor.

Recross examination by Mr. Royall:

Q. What was the name of the dealer you mentioned whose lease was cancelled for nine months? A. Mr. Suffert of Texas Company cancelled that lease about two years ago. The dealer's name was Bob Stern—Bob's (3078) Texaco Station.

Mr. Royall: We move to strike the part where he said they cancelled that. I just asked him the name of the dealer. He repeated the statement about what Mr. Suffert said.

* * *

Theodore H. Shiff, Jr., for Commission—Direct

THEODORE H. SHIFF, JR. was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address for the record? A. Theodore H. Shiff, Jr. I work for the Berry Tire Company at 6415 North Bosworth, in Chicago.

Q. How long have you been with Berry, Mr. Shiff? A. Two months short of two years.

Q. What territory do you cover for Berry? (3079) A. From Roosevelt Road to Lawrence Avenue, and from Lake Michigan to Austin.

Q. What type customers do you sell to? A. Car dealers, gas stations, garages; that is all.

Q. Among the gas stations are there any Texaco dealers? A. Yes, sir.

Q. Can you give us some idea of the number? A. That I sell to?

Q. First, how many Texaco stations are in your trade area? A. I would say that there are ten or twelve Texaco stations that are company stations.

Q. What do you mean by company stations? A. Well, there are a few Texaco stations in my area that are controlled or that the operators lease from Texaco jobbers.

Q. Are there other types? A. Oh, yes. The direct company operations where the operator leases directly from the Texaco Company.

Q. How many in all are there? A. I would say that there are about 15 in all.

Q. In your territory? A. Yes, sir.

* * *

(3080) Q. Do you attempt to sell to all of the Texaco stations? A. Do I attempt to?

Q. Yes. Do you call on all of the Texaco stations? A. Not all; no, sir.

Q. How many do you call on? A. I call on about ten, some regularly and some only occasionally.

Q. How many do you call on regularly? A. About five.

Q. You call on five out of about 15, is that correct? A. Yes, sir.

Q. Why do you not call on the others regularly?

Mr. Royall: Objection.

A. Because they tell me that they can't give me any business because the company won't allow them to.

Mr. Royall: Motion to strike, your Honor. We objected first. I don't know whether your Honor ruled on it.

Hearing Examiner Kolb: The objection will be overruled. The motion to strike will be denied.

By Mr. Dias:

Q. Of the five that you regularly sell, what type products do they buy? A. Prestone—now, are you referring here to the company stations or to the ones that are operating through this Texaco jobber?

(3081) Q. First I am talking about any Texaco station that you may sell to. What do you sell them? A. I sell them Auto-Lite batteries. I sell them Prestone. I sell them Dunlop tires, inner tubes, possibly.

Q. Any accessories? A. Some, not to any great extent.

Q. Can you give me the names of those stations that purchase the Auto-Lite batteries and Dunlop tires? A. Again do you want me to distinguish between the company—

Q. No. Just give me the name of the station that purchases Auto-Lite batteries. A. Auto-Part, Incorporated, at 1415 Irving Park Road; Al's Texaco, 4635 Milwaukee; Dick's Texaco, 5739 Belmont. Those three purchase Auto-Lite batteries from me. But all three of those are operated by the Adam Miller Company which is a Texaco jobber.

Q. Do they also buy Dunlop tires? A. Auto-Part and Al's Texaco have on occasion bought Dunlop tires.

Q. Who are the other two stations that you sell to? A. Actually, there are three others that are company stations. One is Peterson Service Station at 17—in the 1700 block on Irving Park, and Al Feller Texaco, in the 2800 block on Irving Park; and Howard's Texaco at Elston and Lawrence.

(3082) Q. What products do Peterson's buy? A. Peterson tells me that he can buy nothing except vulcanizing and recapping from me because he is not allowed to buy anything else.

Mr. Royall: Motion to strike, your Honor, both on the ground it is not responsive and because it contains double hearsay.

Hearing Examiner Kolb: Motion denied.

By Mr. Dias:

Q. What does Al Feller buy? A. Al Feller buys—the year before last he bought Prestone from me, and in 1956 he gave me an order for Prestone in the early fall, and when I delivered the Prestone in the early part of November he turned it down and said that he couldn't handle Prestone, that he wasn't permitted to handle Prestone.

Mr. Royall: Motion to strike, your Honor, both on the ground that it is not responsive to the question and because it contains double hearsay.

Hearing Examiner Kolb: Motion denied.

(3083) *By Mr. Dias:*

Q. Howard's Texaco? What do they purchase? A. Howard's Texaco purchases recapped tires from me and vulcanizing and recapping on tires that he supplies me with.

I did deliver some Prestone to him.

Q. When? A. I did deliver some Prestone to him this fall. He has only been there about less than a year.

Q. Can you tell us what the TBA line is that Peterson's carry? What sort of tires, what brand tires and batteries do they carry, if you know. A. I can't truthfully say, but if you want an opinion—

Q. No. A. I can't truthfully say that.

Q. What does Al Feller carry in the way of tires and batteries? A. Al Feller carries Goodrich batteries.

Q. Does he stock tires? A. So few that he could hardly be called a stocking dealer.

Q. How about Howard's Texaco? A. Howard's Texaco stocks Goodrich tires.

Q. And batteries? Do you know what kind of batteries he carries? A. I would be guessing.

Q. Do you know whether or not Peterson's is a leased or an (3084) independently owned station? A. Peterson's is a leased station.

Q. How about Al Fellers? A. Al Feller is a leased station.

Q. Howard's Texaco? A. Howard's Texaco is a leased station.

Q. Have you ever solicited new Texaco station business, or stations where a new operator just moved in? A. Yes.

Q. Were you able to sell to them? A. No. The only thing I was ever able to sell to them, and the only thing that I usually would solicit in a station of that type, would

be recapping and vulcanizing, because those are the things that do not conflict; the dealer feels that those do not conflict with anything that—

Mr. Royall: I move to strike that answer as not being responsive and being a conclusion.

The Witness: I can't answer that any other way.

Mr. Royall: And hearsay.

Hearing Examiner Kolb: The motion to strike will be denied.

By Mr. Dias:

Q. Do you know who the Goodrich supplier is in your territory? A. Biltmore Tire Company.

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(3085) *Cross-examination by Mr. Royall:*

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Q. You spoke of a new station approached where you sold only a few items. What was the name of that station? A. I didn't specify any particular station.

Q. Can you give the name of any station, new station? A. Yes, sir. Howard's Texaco was one, Elston and Lawrence.

Q. Are there other Texaco stations other than the ones you named to whom you sell? A. Yes. I sell Bob's Texaco. I can't give you the exact (3086) address. I should say about 4200 Elston Avenue. I sell him vulcanizing and recapping.

Q. I didn't ask you what you sell. I just wanted the names. A. Bob's Texaco. To the best of my recollection he is about 4200 Elston.

Q. Do you sell Motor Court? A. Motor Court?

Q. 1415 Irving Park. A. That is Auto Port—

Q. Auto Port? A. Yes, sir.

Q. Do you sell Al Grabek? A. Yes, sir.

Q. Do you know any others that you sell? A. I stated the ones that I sold.

Q. I mean any others that haven't been mentioned. Do you recall any others? A. I can't think of any others.

Mr. Royall: That is all I have.

* * *

(3087) *Redirect examination by Mr. Dias*:

Q. You mentioned Bob's Texaco. I don't believe you mentioned that one before. What do you sell them? A. I don't actually call on that account. He calls in. I have called on him and he told me there was no use calling on him. So he calls in and places an order for the truck to pick up vulcanizing and recapping. That is all I sell him.

* * *

(3088) JAMES L. DOSS was thereupon recalled as a witness for the Commission, and, having heretofore been duly sworn, testified as follows:

Further redirect examination by Mr. Dias:

Q. Mr. Doss, will you give us a little information about Omaha? Is that part of this division? A. Omaha is located in the territory over which I have supervision.

* * *

(3089) Q. I note there are three different types of salesmen listed—resale, merchandising, and general. I believe we have the definition of a resale and a general sale. What is a merchandising sale? A. You have a definition from me on merchandising and general.

Q. Then the other is missing. A. Resale is missing.

James L. Doss, Recalled, for Commission—Redirect

Q. What is the definition of resale. A. Prior to January 1, 1954, all salesmen were classified as resale salesmen. We did not have two different types. The duties of the resale salesman prior that date would parallel closely the duties outlined for the merchandising and general salesman today, other than the fact that the merchandising salesman does not have any accounts other than dealer accounts in his assigned list.

Q. And those dealer accounts may be leased or contract stations? A. That is correct.

Q. Is there any further explanation? A. No.

Q. I asked you about Omaha. You say that is in your territory. I assume Lincoln is, too. A. Yes.

(3090) Q. Do the activities of Omaha and Lincoln differ in any respect from those of the Chicago area? A. No.

Q. I believe there are some items that you have covering Omaha, a number of Texaco outlets. Are you going to read them in or do you have a document there? A. I have a memorandum on the number of outlets in the Omaha-Lincoln area.

Q. First tell us the number of Texaco outlets in Omaha and then Lincoln, or if you have them combined state so. A. These are grouped together, Lincoln and Omaha.

Q. They are grouped together? A. Yes.

Q. Is that considered one sales area? A. For all practical purposes it is. However, we have a bulk plant in Omaha and a bulk plant in Lincoln. But the salesman and zone manager in the Omaha bulk plant covers the Lincoln area.

Q. That is zone manager and salesmen or man? Do you have more than one salesman? A. We have more than one salesman.

James L. Doss, Recalled, for Commission—Redirect

Q. Before we get off that: Is that the only bulk plant that you have? Just one bulk plant each in Omaha and Lincoln? A. That's right.

Q. Are these company owned? (3091) A. They are company owned.

Q. Now the number of Texaco outlets in the area? A. These are divided between class "C," "D," and "E" accounts. We have no other classifications.

Q. You have no consignees? A. Not in this area. In 1952 we had 45 "C" accounts; 17 "D" accounts; and 2 "E" accounts.

In 1953 we had 48 "C" accounts; 17 "D" accounts; and 2 "E" accounts.

In 1954 we had 53 "C" accounts; 19 "D" accounts; and 2 "E" accounts.

In 1955 we had 57 "C" accounts; 19 "D" accounts; and 2 "E" accounts.

In 1956 we had 59 "C" accounts; 19 "D" accounts; and 2 "E" accounts.

There might be a few accounts that are not classified.

Q. You don't know how many there would be? A. I would not know how many.

Q. There may be some.

Now do you have figures showing the number of each nominated to Goodrich and Firestone? A. Yes.

Q. Goodrich first. A. Beginning with the year 1954. Our records are not available for the years 1952 or 1953. Beginning with which (3092) company?

Q. Goodrich. A. In 1954 ten accounts were nominated to and approved by Goodrich. This is the total number of accounts not nominated that particular year.

Q. Wait a minute. Would you say that again? What is the explanation? A. In 1954 there were a total of ten outlets approved by Goodrich.

Q. Nominated and approved? Is that right? A. That's right.

Q. Do you have a breakdown as to whether they are "C" or "D" accounts? A. No. This is grouped.

Q. That is ten in all. In 1955? A. Thirteen. And in 1956, 15.

In 1954 a total of 56 accounts assigned to Firestone. In 1955 a total of 59. In 1956 a total of 60.

Q. You say assigned to Firestone? Is that correct? A. Well, nominated to and approved by. That is what it means.

Q. Do you have the numbers of each buying Goodrich or Firestone? Tires, tubes, batteries, et cetera. A. Yes, I do.

In 1954 we had three accounts buying Goodrich exclusively; (3093) in 1955 we had five buying Goodrich exclusively; and in 1956 we had seven buying Goodrich exclusively.

Q. May I have the 1955 figure again? A. Five.

Q. And seven in 1956? A. Seven in 1956.

Mr. Royall: Let me say this to you, Mr. Dias: I think he read the wrong column on that. I have the paper before me. Could I direct that to you?

Mr. Dias: Yes.

Mr. Royall: He read line 4 instead of 5, on the number buying Goodrich exclusively.

The Witness: I would like to change that.

By Mr. Dias:

Q. Go ahead. A. The number buying—there were no accounts buying Firestone or Goodrich exclusively in any of the years given.

Q. That is 1954, '55 and '56? A. That is correct. I read the wrong line the first time. In 1954 we had 8

accounts buying Goodrich and other merchandise except Firestone.

In 1955 we had 8 accounts buying Goodrich and other merchandise except Firestone.

The same number for 1956—8.

Q. Do you have figures for Firestone? (3094) A. In 1954 we had 52 accounts buying Firestone and other merchandise except Goodrich.

In 1955 we had 53 accounts buying Firestone and other goods except Goodrich.

In 1956 we had 53 accounts buying Firestone and other merchandise except Goodrich.

Q. I believe you have a list of the names of the salesmen in Omaha? A. Yes, sir.

(Discussion off the record.)

The Witness: In 1954 we had three accounts buying both Goodrich and Firestone and other merchandise.

In 1955 we had five accounts buying both Goodrich and Firestone and other TBA goods.

In 1956 we had seven accounts buying both Goodrich and Firestone and other TBA goods.

By Mr. Dias:

Q. In checking those figures, in 1956 there were 15 nominated to Goodrich? A. Right.

Q. Plus 60 to Firestone. A. Right.

Q. That is a total of 75 in the area? Is that correct? A. Seventy-five accounts nominated to and approved by Firestone and Goodrich together.

(3095) Q. In 1956 there were 7 buying both. There were 8 buying Goodrich and other. And 53 buying Firestone and others.

Mr. Barton: That is not quite correct.

The Witness: Where you said buying Goodrich and others you should have added "except Firestone."

By Mr. Dias:

Q. All I am interested in is the sum. I come up with a total of 68 as against the 75. Is that significant of the sum not buying? A. That probably is—

Q. Do you have any figures on that? A. We have no record of the accounts that are not buying. We don't receive any information on that.

Q. On the number of Texaco outlets in Omaha and Lincoln, as I understand it, there are 59 plus 19 plus 2, or a total of 80 Texaco outlets. Is that correct? A. That is correct. There are probably a few others that are not classified.

Q. What type would they be? A. They would be the small service station or garage that would not be considered a potential TBA merchant.

Q. And therefore not nominated? A. Yes.

Q. The man in charge of your bulk plant is known as the zone manager? (3096) A. We have an agent at the bulk plant who is an operating man who has jurisdiction over the truck operation and general plant maintenance.

Q. Who is it that is primarily responsible for the operation of the bulk plant? Isn't that the zone manager? A. He has supervision over that, yes.

Q. And who is that? A. Omaha? M. E. Burgess.

Q. Is there a separate man for Lincoln? A. The same man covers the Lincoln area.

Mr. Dias: That is all.

James L. Doss, Recalled, for Commission—Recross

Further cross-examination by Mr. Royall:

Q. Mr. Doss, when you referred in answer to Mr. Dias' question to others buying TBA were you referring to items of TBA that are competitive with the Goodrich or Firestone items as the case may be? A. That's right.

Q. That is true in Chicago?

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(3097) Q. The same situation exists both in Chicago and Omaha and Lincoln? A. That is true.

Q. As to the same—the same situation exists as to the class of items of other makes, is that right? A. When we—

Q. They are competitive? A. When we say "other TBA" we mean TBA purchased from other sources, which TBA is in competition with the Goodrich and Firestone TBA.

Q. You were asked by Mr. Dias whether the procedures which you described in Chicago were equally applicable to Lincoln, and I think you replied yes. That includes, does it not, the instructions that were given as to the independence of the dealers and the right of choice of the dealers—

Mr. Dias: I object.

By Mr. Royall:

Q. (continuing)—in all three towns? A. Yes, sir.

Hearing Examiner Kolb: Objection overruled.

By Mr. Royall:

Q. That was I believe—that is one of the procedures described by you and Mr. Knight in testimony here? A. We did describe that.

(3098) Q. Including the contacts with the salesmen and from the salesmen to the dealers? A. In the administration of the policy?

Q. No. The procedures, the documents as to independence. A. Yes, sir.

Mr. Royall: That is all.

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(3100) Mr. Dias: It is stipulated between counsel for respondent and counsel supporting the complaint that the witness Francis Dwyer knew that Mr. Suffert had died approximately three months ago.

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RAYMOND P. JENNINGS was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Jennings, will you give us your full name, please? A. Raymond P. Jennings.

Q. What company are you connected with? A. Jennings Auto Supply.

Q. Where is that located? A. 8408 South Morgan Street. That is my home, too.

Q. Do you own that business yourself? A. Yes, sir.

Q. How long have you been in it? A. Since January 1948.

Q. What kind of business is it? A. Tires and batteries primarily to service stations, garages, and automobile dealers. A couple of those are fleet accounts.

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(3101) *By Mr. Boyd:*

Q. What brand of tires and batteries do you sell? A. Goodyear tires and Volta batteries.

Q. Are those the brands that you have handled ever since you have been in business? A. That is right.

Q. Mr. Jennings, what is your trading area, the area in which you sell, in other words? A. The far southwest side of Chicago from, say, about 69th and south and Cottage Grove Avenue west, and Blue Island, Illinois. Blue Island is a suburb.

Q. How many people do you people employ in your business? A. None.

Q. You are the only one? A. That is right.

Q. How many service stations of all kinds would you say are in that area in which you do business? A. I could only guess, but there must be—

Q. Your best guess? A. Several hundred.

Q. Do you have any idea of how many Texaco stations are in there? A. Just another guess.

(3102) Mr. Royall: We object to a guess.

By Mr. Boyd:

Q. What class of customers do you do business with? A. Service stations, garages, automobile dealers, used car lots.

Q. What is your present annual volume of business? What was it in 1956? A. About $22,000.

Q. And in 1955? A. About the same.

Q. And prior to that time what would you say? In 1954? A. I think it was a little better in 1954; not a great variation.

Q. Do you do business with any Texaco stations? A. Yes, sir.

Q. Could you tell us which ones they are? A. I have an account called Supple Brothers.

Q. Where is that located? A. 9900 Vincennes.

Q. And what kind of business do you do with them? A. Batteries only. Do you mean what do I sell him?

Q. Yes. A. Batteries.

Q. Can you give us any idea of the amount of business you do with him? (3103) A. Probably a hundred batteries a year.

Q. Do you know whether that is a leased station or— A. No, that is an independent station.

Q. Independent Texaco station? A. Yes.

Q. Do you sell him anything else? A. Just occasionally. Just once—he handles Firestone tires—once in awhile if he wants Goodyear he will call me but not very often.

Q. Can you tell us some of the other stations, Texas stations, that you do business with? A. I have one at 87th and Loomis which I have had for—he has been fairly active for the last few months, six months perhaps.

Q. What is the name of that? A. Chuck's Texaco Service Station.

Q. When did you first sell Chuck's? A. About two years ago.

Q. What did you sell him? A. I didn't actually sell him. I consigned him a stock of batteries. He was fairly new, a fairly new operator at that time. I gave him some batteries on consignment, partly to get the account and partly to help him.

Q. Did he continue to sell batteries from that time? Just what happened? (3104) A. No, there was interruption. I went in there one day and my batteries were moved out of the office and there were some other batteries there.

Q. Where were your batteries? A. I asked him and he told me that he had to put them in the back and hide them; cover them up, which he had done.

Q. Did you see them?

Mr. Royall: Wait a minute. Move to strike, your Honor, on the basis of opinion; all hearsay, double hearsay; all double hearsay.

Hearing Examiner Kolb: The motion to strike is denied.

By Mr. Boyd:

Q. Did you see the batteries in the back room? A. Yes, I did.

Q. Did he have any other batteries on display? A. Yes, sir. In the office he had some other batteries.

Q. What were they? A. Goodrich.

Q. Do you still sell him? A. Yes, I am selling him again now.

Q. What has been the situation since then? Would you bring us up to date from that time to the present?

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(3105) A. I was out of there for perhaps a year and then he called me and wanted a battery. Little by little I think I have regained his battery business. He told me that he had some differences with the Goodrich suppliers.

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By Mr. Boyd:

Q. Do you know who his suppliers are? A. Gardner & Kienzle.

Q. Just Yes or No, do you know? A. Yes.

Q. Who are they? A. Gardner & Kienzle, and Warrick H. Lambie.

Q. When did you start getting back in to selling him some Volta batteries? A. I think early Fall.

Q. What year? A. 1956.

Q. Does he openly carry these batteries now? (3106) A. Yes, he does.

Q. Do you sell a station at 80th and Racine, a Texas station? A. Once or twice a year, I would say; very rarely.

Q. Incidentally, referring back to Chuck's Station, is that a lessee station or an independent, do you know? A. That is a lessee.

Q. And as to the one at 80th and Racine, what do you sell him? A. A battery occasionally, one or two or three a year.

Q. Does he carry any other batteries that you know of? A. No. He has nothing in stock.

Q. Have you ever sold a Texas service station at 7001 South Western Avenue? A. I did, yes.

Q. When did you see him? A. Up until 1952; about the middle of 1952.

Q. Who ran the station then? A. Jim Coglianese.

Q. Do you know whether it was an independent or lessee station? A. Jim Coglianese owned the property, as I understand it; leased it to the Texas Company on a master lease; and then they sublet it to him as an operator and he ran the station.

Q. How long had you sold him up to 1952. (3107) A. About four or four and a half years.

Q. What did you sell him? A. Batteries and tires.

Q. What happened in 1952? A. He retired from business I think for reasons of health, and the Texas Company sublet the station to another operator.

Q. Do you know who that was? A. McWhinney.

Q. Have you sold McWhinney? A. No.

Q. What has been the situation? A. Nothing.

Q. Did you endeavor to sell him? A. Yes, I tried. Coglianese, being the former operator, introduced me to

McWhinney. He told me, "I think I can keep this account for you. I will take you over and talk to McWhinney", and he did. McWhinney seemed agreeable. He was terribly busy. He had just opened up that day. He said, "Can you come back in a week and we will talk about putting in some batteries on display?" And I said I would be glad to.

Mr. Royall: Objection.

Hearing Examiner Kolb: Are you finished?

The Witness: No. I went back in a week to see McWhinney and he wouldn't talk to me. He said there was (3108) a man there from Texaco or Goodrich and he didn't want them to know that he was talking to me. He met me outside the door. There was somebody inside. He said, "Don't come in."

* * * *

By Mr. Boyd:

Q. Did you go back after that to see McWhinney? A. I made one or two other attempts after that but I didn't sell him anything.

Q. Did McWhinney—do you know what he started stocking after that, or what he had in stock or sold? (3109) A. I really don't know.

Q. What about new Texas stations opening up, Mr. Jennings? Have you made any efforts to sell them? A. I have made occasional attempts, especially if they are close to me where I think perhaps I can do them some good on a weekend or something when they couldn't get service. But it has been quite fruitless.

Q. Has there been one in your vicinity recently? A. Yes. Within the last year there was one about three blocks from my home.

Q. Where is that located? A. 8500 South Racine.

Q. Is this a new station? A. Yes, it was new.

Q. Did you go in to see the man, the operator? A. Yes, I talked to the operators and they told me that they couldn't buy from me. They said, "We have to handle Goodrich. You know how it is."

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(3110) Q. Do you know what they have on hand or are selling? A. Goodrich.

Q. Batteries and tires? A. I think the tires, too. I didn't look at the tires.

Q. Are these the accounts that you have given me the only ones that you sell, the Texaco accounts? A. I think that is right, yes. I can't think of another one now.

Q. There are other Texaco stations in your territory? A. Oh, yes.

Q. You don't call on them? A. No. It hasn't been profitable.

Q. Why? A. Well, I—

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. I could make a lot of calls and do very little business.

By Mr. Boyd:

Q. Has that been your experience? A. That has been my experience.

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(3113) FRANK A. BRUSEK was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Brusek, will you give us your full name and business connection? A. Frank A. Brusek. Proprietor and President of Motor and Axle Parts Service, Incorporated.

Q. Where is your business located? A. 7711 South Ashland Avenue, Chicago.

Q. Is that the only place of business, or do you have another? A. In the City of Chicago, yes.

Q. Do you have some other place outside of Chicago? A. Indiana. An affiliation in Indiana.

Q. Where is that? A. 650 South State Street, Hammond.

Q. What type business is that, your business in Chicago? A. Engaged in the distribution of automotive service parts.

Q. What does that include? A. It embraces anything that is used in the automotive, (3114) truck or car, and engines, consisting of pistons, piston rings, valves, guides, springs, bearings, fan belts, radiator hoses, spark plugs, oil filters, gears, transmissions, clutches, clutch parts.

Q. What about batteries? A. Batteries. We have various and sundry articles used in the reconditioning and refinishing of bodies.

Q. Do you sell tires? A. No, sir.

Q. How long have you been in this business? A. Thirty-two years.

Q. What brand of batteries do you sell? A. At the present time?

Q. Yes. A. Volta.

Q. How long has that been true? A. Since we have handled Volta?

Q. Yes. A. This is now the third year.

Q. Did you handle something else prior to that? A. Willard.

Q. What about spark plugs? What brand? A. AC.

Q. Oil filters? A. AC.

(3115) Q. Fan Belts? A. Gates.

Q. Radiator hoses? A. Gates.

Q. What is the trading area of your firm? A. That we embrace?

Q. Yes, sir. A. 47th Street on the North, the Lake on the east, City limits on the west, City limits on the south.

Q. How many salesmen do you employ? A. Three.

Q. Are these outside salesmen? A. Outside.

Q. With what classes of customers does your firm do business? A. Automotive repair shops, automotive service stations, industrial accounts, automotive car dealer and truck dealer.

Q. You said automotive service stations. Do you mean — A. Filling stations, if you use the term.

Q. Could you give us an idea, since 1952, what the annual volume of business of the firm has been, approximately, each year? A. Since 1952?

Q. Yes, sir. A. We fluctuated between $375,000 and $400,000 since 1952.

Q. What has been the situation with respect to service
(3116) station business? What percentage of your business today is service station business? A. That is rather a difficult question to answer, Mr. Boyd, in that it fluctuates likewise. Many service stations whom we enjoyed previously, with business such as fan belts, radiator hoses, spark plugs, filters, batteries, have changed their mode of distribution and purchasing habits and many of them have gone into repair business of which we are now enjoying

their business, such as replacement of mufflers, brake linings, things of that nature. So in giving you a percentage of what business we do with them today, I would say we have lost anywhere from 25 to 33 and a third percent of the volume we previously enjoyed.

Q. Has it been a particular type produce that that business has been lost on? Product or products? A. I would say that confines itself particularly to batteries and fan belts, spark plugs, oil filters, aeceptable items that are generally distributed by a service station and consumed and used by them.

Q. Mr. Brusek, how many service stations of all types, of different oil companies—in other words, total—how many would you say are in your trading area? A. That is almost like asking how many beans are in a pot. I could give you a rough estimate of the whole situation. I would say 400 to 450.

(3117) Q. What about the number of Texaco stations in that area? A. Frankly, Mr. Boyd, I have never pinpointed them down to that particular classification, as to whether they distributed this, that, or the other thing. But as a guess I would say probably 15 or 20 percent of that volume.

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

By Mr. Boyd:

Q. Did you say 15 or 20 percent? A. I would say that. That is strictly a guess on my part. I have nothing to substantiate that.

Mr. Royall: I move that answer be stricken.

Hearing Examiner Kolb: Read the answer.

(Answer read.)

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Boyd:

Q. Mr. Brusek, does your firm sell any batteries, spark plugs, fan belts, radiator hoses or oil filters to Texaco stations today? A. On an exclusive basis do you mean?

Q. No, I mean do they sell them in any manner? A. Oh, yes. I would say occasionally we sell them.

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(3118) *By Mr. Boyd:*

Q. What is the basis on which you sell those items to Texaco service stations, that is, spark plugs, filters, radiator hose and batteries when you do sell? A. You are speaking of basis. How do you mean that?

Q. Do they buy and stock those items?

Mr. Barton: Objection.

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. Yes, they openly buy them and stock them. In some instances they use them immediately, immediate consumption rather than put them on the shelves because it probably may not be the brand they have been carrying, or that nature.

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(3119) *By Mr. Boyd:*

Q. How many Texas stations purchase those items from you today? A. Mr. Boyd, that is a difficult question to answer. Without referring to invoices and going over that thing it would be strictly a guess on my part if I told you any amount at all.

Q. Do you know of any regular purchasers, Texaco purchasers?

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A. No, Mr. Boyd, it would be a difficult thing for me to give you a sincere and honest and frank answer.

Q. Does the firm sell its other, other than batteries and spark plugs, oil filters, fan belts and radiator hose, to Texas stations? A. Oh, yes.

Q. Is there any difference between your ability to sell those items to the Texas stations and the ability to sell batteries, spark plugs, oil filters, fan belts and radiator hose?

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A. Yes, there is a distinct difference because that is a consumer item that he uses immediately for installation in the car he has in for repair.

(3120) *By Mr. Boyd:*

Q. What is? A. Muffler, tail pipes; clutch parts, brake parts.

Q. Why does that make a difference as compared to the other five items?

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A. The other five items are generally accepted as stock-in items, and are universally used in various types and models of cars, where brake parts and muffler parts are more or less specific to that particular car, consequently not readily stocked.

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(3121) *By Mr. Boyd:*

Q. Are you saying, Mr. Brusek, that you can sell the items of spark plugs, oil filters, fan belts, radiator hose and batteries with equal facility to Texas stations as you can these repair parts that you sell? A. No, sir, I can't

say that, because in many instances some of these stations have restrictions placed upon them.

Q. What kind? A. By whom I don't know.

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(3125) Q. Do your salesmen make efforts today to sell to Texaco service stations, that is, these competitive items, spark plugs and so forth? A. Oh, yes, yes.

Q. What is the result of those efforts? A. We just don't get the business.

Q. Are these efforts made regularly? A. Yes, at regular intervals they are.

Q. How regular? A. Well, the salesmen generally cover their territory within a two-week period.

Q. Do you consider those five items—the batteries you sell, spark plugs, oil filters, fan belts and radiator hose—to be competitive with the items sold by Texaco stations? A. Do I consider them sold? Yes, sir.

Q. Competitive? A. Yes, sir.

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(3126) HENRY TRAUSCHT was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Boyd:

Q. Mr. Trauscht, will you give your full name and business connection? A. Henry Trauscht. I am secretary, general manager, and partner in the Evanston Auto Company.

Q. Where is that located? A. 23 Dempster Street, Evanston.

Q. Does the place have any other place or places of business? A. Yes, sir. It operates in Highland Park under the trade name of Highland Park Auto Parts.

Q. What is the address there? A. 1900 North First Street, Highland Park Illinois.

In Waukegan it is Lake County Auto Parts, 903 Belvedere Street.

In Libertyville it is Lake County Auto Parts, at 109 West Church Street.

Q. How long has the firm been in business? A. The firm was taken over by my associate and myself in 1938. However, it has operated as a corporation since 1919.

Q. What is the nature of the business of the firm? (3127) A. Wholesalers of automotive parts, equipment, and supplies.

Q. Does that include batteries? A. Yes, sir.

Q. Spark plugs? A. Yes, sir.

Q. Oil filters? A. Yes, sir.

Q. Fan belts? A. Yes, sir.

Q. Radiator hose? A. Yes, sir.

Q. Will you tell us the brands of those items that you sell? A. We sell AC spark plugs, AC and Fram oil filter elements, Delco batteries, Gates rubber products, which include fan belts and hose. Does that cover it?

Q. Yes, sir.

What is the geographical trading area of the firm, including that store and the three other stores that you mentioned? A. Approximately from Howard Street—the Chicago/Evanston line—to Waukegan, just directly north of Waukegan, west to Fox Lake, that is on a line west of Waukegan; and there is an area west of Lake Bluff that we do not take in, however we extend into Libertyville and out of Highland Park we take in Wheeling.

(3128) Out of Evanston as far west as Morton Grove. That is Morton Grove, Skokie, Glenview, and those towns.

Q. What is the class of customers with whom the firm does business? A. We sell industrial accounts, car deal-

ers, fleet operators, gasoline service stations and car dealers.

Q. How many salesmen do you employ? A. Four.

Q. What percentage of the business would you say is service stations? A. Upwards of 50 percent.

Q. Could you give us some idea of what the annual volume of business is? A. This is in an open hearing. I would rather not answer that question.

Q. Could you give us an approximation?

Hearing Examiner Kolb: Make it approximate.

The Witness: It is a little less than a million dollars volume per year.

Q. How many service stations would you say are in the area in which you operate? A. Several hundred; 150 to 200.

Q. Could you give us some idea of the number of Texas stations that you know of in the area? A. Does that question include the independent operator?

(3129) Q. Yes; all kinds, leased and other. A. I would say around 45.

Q. How many of those stations, Texaco stations, do you sell batteries, spark plugs, oil filters, fan belts and radiator hose? A. I would like to refer to my notes, if I may.

Q. Will you tell us what those notes are? A. When I received a subpoena for this hearing I had a survey made by our salesmen of the Texas accounts, that is the accounts who handle Texaco products that they call on. And I have those surveys with me as well as a summary of the surveys that I made yesterday.

Q. Will you get it out, please? Would you tell us the basis of the information included and sought in the survey? A. The best way I can do that would be to read the questions and answers that I put on there, if you want to take that time.

Mr. Boyd: I believe we better have it marked for identification so we will know what we are talking about.

Your Honor, I ask that there be marked for identification as Commission Exhibit 148-A through Z-1 the papers I hold in my hand which are entitled "Survey, Texaco Service Stations Only," listing a number of questions.

(The documents referred to were marked Commission's Exhibits for identification 148-A through Z-1.)

(3130) *By Mr. Boyd*:

Q. Mr. Trauscht, who compiled this questionnaire used in this survey? A. I did.

Q. Who made the survey? A. Four salesmen that we employ.

Q. When was it done? A. Within the past 30 days.

Q. Whose idea was it to prepare it? A. It was mine.

Q. And this reflects the results of the questions asked and the answers received, is that right? A. Yes, sir.

Q. And it indicates the names of the places contacted? A. Yes, sir.

Mr. Boyd: Your Honor, I offer in evidence Commission's Exhibit 148-A through Z-1.

* * *

(3131) Q. Mr. Trauscht, how were the stations selected that reflect the information contained in that survey? A. I visit our branch stores several times a month. After I had these forms made up on one of those visits I left them at the store with instructions to the store manager to have their salesman contact the Texas accounts

in their territory that they called on. Of course being headquartered at Evanston it was a simple matter to give instructions to our salesmen in Evanston to do it. Frankly, I thought it was a pretty good idea—naturally we always think our own ideas are good—to prove something that I know of course exists in our industry with all leased stations, regardless of (3132) whether Texaco or who it is.

Mr. Royall: We move to strike a part of his answer as not being really responsive.

Hearing Examiner Kolb: The motion to strike is denied.

By Mr. Boyd:

Q. Was the information contained on the survey obtained from the operators of the stations? A. Oh, yes; yes, sir.

Q. The top sheet, who prepared that? The summarization? A. I did.

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(3133) (The document heretofore marked Commission's Exhibit 148-A through Z-1 for identification, was received in evidence.)

By Mr. Boyd:

Q. Mr. Trauscht, how many of the stations that are listed—I believe there are 26—do you know whether they are leased stations or independent stations? A. Twenty-three of them are leased and three are independent.

Q. Could you tell us the three that are independent? A. May I first of all state what my concept of an independent station is?

Q. Yes, sir. I wish you would. A. In my opinion an independent station is one that does not lease from the Texas Company. The three that come in that category are Swifty's Texaco Service—that is in Evanston; Mayday Brothers, likewise in Evanston; and the Everett Garage, in West Lake Forest.

By Mr. Boyd:

Q. Mr. Trauscht, I hand you Commission Exhibit 148-A. Under the category where it has two columns, Yes, and No, under Yes it says 3, and under that 4, and the word "part." Will you explain what that means? A. "3" means that in the first answer here, do we sell (3134) this account spark plugs, there is a "three" above where it says part four. "Three" means that we sell them all of their plugs.

Part, and then four, means that there are four of them that we sell part of their spark plug requirements.

Q. In other words, the four is in addition to the three? A. Yes, sir.

Q. Is that true for the other answers where similar type information is reflected? A. Yes, sir.

Q. Do the individual sheets in support of that summary show the ones where you sell part to? Or where you sell all to? A. Yes, sir.

Q. Mr. Trauscht, has your firm ever enjoyed any more success in selling Texaco service stations than it does today? A. Yes, sir.

Q. Can you tell us when that was? A. I am thinking particularly of permanent-type antifreeze. Of course we handle Prestone, and at one time they were the only producers of a permanent-type antifreeze. It is prior to the time that the patents expired. If a service station wished to handle a permanent-type antifreeze there was no other

they could buy. And of course we enjoyed a lot of business with all of the service stations with Prestone (3135) antifreeze.

Q. Including Texaco? A. Including Texaco; yes, sir.

Q. What about on batteries and spark plugs? A. No, I can't remember in the last 15 years except during the war period, and after the war when merchandise was hard to get we never enjoyed any more business from them than we do presently.

Q. Can you sell to them during the emergency period? A. Oh, yes.

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(3138) Q. On the three Texaco stations that you sell —Swifty's, Mayday, and Everett Garage, do they openly sell your merchandise, display it? A. Yes, sir.

Mr. Boyd: That concludes the direct.

Cross-examination by Mr. Royall:

Q. Mr. Trauscht, I believe there are a few other stations besides those in these papers which you also sell, are there not? A. Some other Texaco stations?

Q. Yes. A. It wouldn't surprise me. Yes, I think there perhaps may be.

Q. Who selected the stations to which this questionnaire was sent? A. I left it to the men, as I explained to Mr. Boyd.

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(3139) *By Mr. Royall:*

Q. I believe you stated that your volume is in the neighborhood of a million dollars. A. I said less than a million dollars.

Q. That meant that it was not very substantially less, did it? A. Some less.

Q. Didn't you say that about a little over a year ago your sales were a little less than $750,000? A. Where was that, sir, if I may ask?

Q. Didn't you state that in a hearing of some kind? A. Yes, I think I perhaps said—made that statement before the Senate Small Business Committee in Washington. That was for 1955. We are now talking about 1956. Our business increased.

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(3141) *Redirect examination by Mr. Boyd:*

Q. I have one question to ask you, Mr. Trauscht. Have you been contacted by the Commission, someone from the Commission other than me, before the day you say you drove me to the station in the rain? A. No, sir.

Q. Do you know Mr. Sam Stewart of the Chicago office? A. Yes, I do know him.

Q. You don't have any recollection of him having talked to you? A. I had a visit from him, but it seems to me that is much more than a year ago when he was in.

Q. You do recall a visit from him? A. Yes. And if I may make a statement here, I have talked so much about these things with all kinds of corporations in (3142) our business, that my memory could be a little hazy. He may have talked to me about it and I don't recall.

Mr. Boyd: That concludes the redirect.

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Mr. Boyd: Yesterday, when Mr. Chanenson was testifying it was requested by Mr. Royall that he supply us the names of the Texas stations with whom he was doing business. I added to the request, and

I believe it was agreeable, that he would also indicate the nature of the products that were being sold through those stations.

At noon I contacted Mr. Chanenson by telephone and he told me that Mr. O'Keefe had given the names in the course of his testimony of about five or six of the Texaco outlets with whom the firm did business, and that in addition to those five the following were others that he did business with, and they are: Supple Brothers, 99th and Vincennes. According to Mr. Chanenson, equipment, no batteries, and tires occasionally on a fill-in basis.

The next one was Bill and Gene, at 99th and Halsted, and he said that was equipment—wheel balancer.

Next is Bernies, 70th and Western, and that was wheel balancer and novelty items.

And Ben's, at 169th and Columbia, and that is Hammond, Indiana.

(3143) The next-on that it says, "miscellaneous—hot patches, sealed beams."

The next one is Ray Johnson, at 103rd and Normal. And the other was Madden's, at 79th and Yates. He said he picks up tires there occasionally.

This information he told me over the 'phone he obtained from his other salesman, Mr. Oscar Vincent. And that is everything that he gave me on the 'phone. And I would add that these, he said, are the only open accounts—he sells to on an open account basis. That is it.

Mr. Royall: Thank you.

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(3153) M. E. BURGESS was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Please state your full name and position for the record? A. M. E. Burgess, zone manager for zone 15, Texas Company, Denver Division.

Q. Zone 15? A. Yes, sir.

Q. Are you stationed here in Omaha, Mr. Burgess? (3154) A. Yes, sir.

Q. Will you outline your duties for us? A. Well, it is broad. I interpret the policies and the instructions of the Texas Company as given to me by Denver Division office. I take care of the company's interests in this zone as they relate to sales, distribution, merchandising, real estate, collections, credits, and accounting.

Q. Do you have anything to do with TBA? A. TBA as regards merchandising, yes, sir.

Q. What do you mean by that? Just the selling of it? A. No, sir. It is part of my job to see that the dealers in the Omaha area are successful service station operators, and to be successful they have to have a complete line to offer their customers, which would include TBA merchandise.

Q. That is the full Goodrich line? A. Any TBA line.

Q. You mentioned the Denver Division office. Will you just describe your place in the organization, that is, this Omaha region? How does that fit into the picture? A. I work directly under a state manager who is also headquartered in Omaha. Then his immediate superior will be the Division office in Denver.

Q. How does Mr. Doss figure into the picture? A. Mr. Doss is regional manager for the central territory of the

Texas Company, which includes as a part, Denver Division.

(3155) Q. How long have you been with the Texas Company? A. Approximately 26 years.

Q. In your present position? A. I have been a zone manager in Omaha for approximately four years.

Q. How much of your time is spent on TBA work? Can you give us some estimate of that? A. Do you mean the overall program, merchandising TBA?

Q. Yes. A. Approximately ten or fifteen percent.

Q. Who else in this particular area works in connection with TBA?—A. I have three salesmen assigned to my zone. I am of course responsible for their activities.

Q. Are they primarily concerned with the promotion of TBA? A. They are primarily concerned with the successful operation of service station outlets. That is, the two merchandising salesmen.

Q. What about the third one? A. The third man is a general salesman and he sells petroleum products to all classes of trade, consumers, garage accounts, new car dealers, service stations.

Q. And he is a general salesman? A. He is called a general salesman; yes, sir.

(3156) Q. Can you give us some idea of how much time is devoted to TBA by the two merchandising salesmen? A. I would say approximately ten to fifteen percent.

Q. And by the general salesman? A. It would be less. Maybe around ten.

Q. Less? A. Under ten.

Q. Less than ten? A. Yes, less than ten.

Q. Five percent, perhaps? A. Between five and ten; yes, sir.

Q. Who else in your office here, works in connection with TBA solely? A. There is no one assigned to zone 15.

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Q. Do the rubber companies report to your office the sales of TBA products, that is, the purchases by the Texaco stations within your zone? (3157) A. No, sir, the rubber companies don't report anything to my office.

Q. Where do they report? A. I assume they report to Denver.

Q. Do you know? A. I do know. They report to Denver.

Q. They do report to Denver? A. Yes, sir.

Q. So that you do not get any information as to the purchases of TBA by the stations, Texaco station in your area? A. I receive a report from the Denver Division office that has those figures. I also receive a report from my salesmen, compiled from information secured from the service agent dealer as to the total TBA sales made by that dealer every month. That is all sales of TBA merchandise.

Q. Regardless of brand? A. Right. It is TBA. It doesn't make any difference, the brand.

Q. How are those reports broken down? A. Each salesman has a defined territory with so many stations assigned to him. And each salesman reports at the end of the month the total gasoline purchases, lubricating oil purchases, and TBA purchases for his service stations.

Q. And on those reports of TBA purchases do they show a breakdown as to brands on TBA at all? (3158) A. No, sir, it is not important in that respect. It is total TBA sales made by the dealer, taken from his—or given to us from his records.

Q. Isn't it a fact that there are more Texaco stations in Omaha selling Firestone TBA than Goodrich? A. Yes, there are more Texaco stations in Omaha selling Firestone than there are Goodrich.

Q. Don't you have any idea of the amount of TBA sold, of the Firestone TBA sold? A. In dollars and cents?

Q. Yes. A. No, sir.

Q. Or products? A. No, sir.

Q. You don't keep those records here? A. You asked me if I knew. I have the record available. I don't know offhand the total.

Q. You mean you don't know only because you haven't looked at the record? A. Right.

Q. But you do get a report of some sort? A. Right.

Q. And that does show a breakdown of the various purchases, is that correct? The purchases of Firestone, the purchases of Goodrich? (3159) A. Yes, sir.

Q. Do you have those readily available? A. By readily available do you mean here, with me? No, sir.

Q. Not here in the room. In the office? A. Yes, sir, I have them in my office.

Q. Am I right in this: Do you get a monthly report or semi-annual report on purchases? A. Get a monthly report of sponsored tire company products. And that is in addition to my salesman's report of total TBA.

Q. And that report comes out of the Denver Division office, is that correct? A. Yes, sir.

Q. When you get that report out of the Denver Division office isn't it summarized for you? A. Totalized?

Q. Yes. A. It is totalized; yes, sir.

Q. Is it totalized by product? Tires, batteries, and then accessories? A. Yes, sir.

Q. Is it also totalized or itemized by individual stations? A. Yes, sir.

Q. Did you say that you received these reports monthly? A. That is in the Division office from my salesmen?

Q. From the Division office first. (3160) A. Yes, sir, I receive those monthly.

Q. In what form are they here? A. It is an IBM form. It is a form out from the running of IBM cards, I should say.

Q. It is not a series of holes. It is printed information? A. Right.

(3161) Q. How long is one of those reports usually? One page, two pages, ten pages? A. I couldn't say. Several pages.

Q. So that if you wanted to note the purchases for any given station over a year's time, you would only have to look at the previous 12 reports that you received. Is that correct? A. That wouldn't include total TBA, no, sir.

Q. It would not? A. No, sir.

Q. If they give you a monthly summary, and if they show the names of the stations— A. That would show what they purchased from Firestone and Goodrich.

Q. So by adding the total shown on each of these 12 reports—one a month—12 months, each report would show the amount purchased by each station? A. Yes, sir.

Q. Then it would be a simple matter of addition, would it not, to determine how much each station purchased over a year's time? A. Yes, it would be a simple matter of addition. The information is not necessary to me in the operation of my zone.

Q. I appreciate that. But you do have that readily available. (3162) A. I have it available.

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Q. Did you say you had three salesmen in all? (3163) A. Yes, sir.

Q. What do these salesmen do to assist Goodrich and Firestone in the sale of TBA products of those respective companies? A. It is not necessarily they assist Goodrich and Firestone. They assist the dealers assigned to them in the merchandising of TBA products.

Q. Do they recommend that the dealer buy something other than Goodrich and Firestone? A. They primarily recommend that the dealer buy either Goodrich or Firestone.

Q. So that is one way that they assist in the promotion of the sale of Goodrich or Firestone, is that correct? They recommend those two brands? A. That is an assistance, sure, because of distribution and supply and advertising a national brand.

Q. What else do they do for them? A. What do they do for the dealer?

Q. No. What do they do for Goodrich and Firestone? A. Well, indirectly it helps Goodrich and Firestone because they assist the dealer in preparing his station to display TBA products; they offer him the help of teaching him how to sell TBA products; they help him with the display of his merchandise in the office; they incorporate, if they can, they suggest the use of an inventory control system so that the (3164) dealer's TBA inventory doesn't become bulky and unwieldy and thus result in financial loss because of over-stocking.

Q. Does the Texas Company make any recommendations as to where advertising will go in the station? Do they do it in this area? A. Where advertising will go?

Q. Yes. Advertising of TBA products? A. No, sir. We suggest that the dealer prominently display any advertising that would help sell any of our products or any TBA he might be handling.

Q. Are the dealers restricted to window banners or signs? A. The dealers are not restricted, sir.

Q. What about these large signs—I have seen Goodrich and Firestone, for example. Who hangs those? Does the rubber company hang them or does Texas hang them? A. No, I believe—in fact, I know both companies have a

sign wagon or someone who goes around and puts up the sign.

Q. When you say both companies, you mean Goodrich and Firestone? A. Yes, sir.

Q. So that the rubber company hangs their own sign? A. In most cases, yes, sir.

Q. Are there any cases where Texas does it? A. No, sir. Sometimes the dealer requests a sign from a certain company and he places the sign.

(3165) Q. What does your office do when you open a new Texaco station or change operators in a station? A. Regarding what?

Q. In regard to notifying Firestone or Goodrich of the impending opening of a new station or appointment of a new operator. A. Well, in an initial interview with the prospective dealer we recommend the use of either Firestone or Goodrich, a nationally advertised company.

Then if the dealer feels that he would like to carry those lines we then call the tire company he selects and arrange an appointment. Or we tell the dealer the man to see and then we call the company and tell them this man is apparently interested in your products and we suggest the tire company contact him.

Q. During the time of that initial contact is the representative of either Goodrich or Firestone present? A. No, sir. See, this is the original interview, where one of my salesmen bring a man to me after—can I explain it?

Q. Yes. A. The salesman makes the first contact with the dealer-applicant. If he is satisfied the man would make a good service station operator, a good businessman, and an attribute to the community, and that he has sufficient finances, and that he himself would want that man operating the station, (3166) then they come to me for sometimes the final interview.

Q. Do you sometimes have two, three, or more applicants for a station? A. No, not any more. It is tougher now. It is tough to get dealer-operators, in this particular area. I don't know how it is in other areas.

Q. How long has that been the situation? A. I would say since Continental Can moved in here, about three years ago, and other industries followed.

Q. After you have had your first interview with the applicant, at which time you recommend Goodrich or Firestone, and he makes a choice, then does a rubber representative accompany your salesman to meet the operator? A. Accompany our salesman?

Q. Yes. One of your salesmen—does the salesman accompany the rubber company salesman? A. It could happen.

Q. As a matter of fact, doesn't it usually happen? A. No, sir.

Q. Isn't it a matter of courtesy to bring a stranger in to meet a friend? A. It might be a matter of courtesy, but it doesn't happen that way one way more than it does the other way, I would say.

Q. Do you notify each of the rubber companies or one of them that prospectively there will be a new station at such (3167) and such location? A. In conversation the information is given to them. Actually, apparently the rubber company salesmen are on the ball enough that they know, too, when a station is going up. And generally they call and we discuss the matter. Or if I happen to meet the man I would say "We are going to put a station up at so and so."

Q. When you say meet the man, you mean the Goodrich or Firestone representative? A. Yes, sir.

Q. Are you in charge of the bulk plant? Is that within your jurisdiction? A. It is within my supervision. We

have a bulk plant agent. That is an operating part of the Texas Company. It covers distribution and supply. That agent—I am responsible for the bulk plant through him.

Q. These three salesmen that you mentioned, are they the same three salesmen who work out of the bulk plant? A. Yes, sir. I would like to clear up a point on the bulk plant. In my particular area I have two company-owned bulk plants other than Omaha that are operated by consignees.

Q. Where are they? A. Fremont and West Point. Of course, my only activity there is to supervise the company properties.

Q. They are Texaco owned bulk plants operated by consignees? (3168) A. Yes, sir. They are independent businessmen, as are our dealers. But because they are in company-owned properties, then I have to watch over the property.

Q. Are they in the TBA business, too? A. In what way, sir?

Q. Do they handle—consignees handle TBA products, do they not? A. These two do not.

Q. They do not? A. No, sir.

Q. I have heard it said that this area operates a little differently than Chicago. Is that so? Do you know whether or not that is so? A. I can't tell you, sir, because I have no way of knowing how Chicago operates. It is a different division. We all have the same policies. I can see no reason why we wouldn't operate the same as far as the policies are concerned.

Q. Are you responsible for the performance of these three salesmen? A. Yes, sir.

Q. And do you have sales meetings from time to time? A. We have informal sales meetings about once a week. Every Saturday morning.

Q. What is the purpose of the sales meeting? A. Well, to discuss any letters of policy that come to us (3169) during the week, or letters of instruction concerning their particular job, or they present any problems that they might have incurred during the week that they have been able to hold over until Saturday, and we discuss those problems.

Q. Anything else? A. Well, if I have been successful or through the real estate department we have been successful in signing a new location for a service station, that information is generally given to the salesmen so that they can make preparations to begin hunting for a dealer if it is in their respective area.

Q. Is that the normal method of obtaining a new dealer. Are they that hard to find? A. I have had a brand new station closed since the 23rd of November because we couldn't find a dealer. And it is still closed today. We have done everything that we can. Apparently we haven't, because we don't have a dealer.

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(3170) Q. Do your salesmen work on any sort of a bonus arrangement? A. They secure, or they can qualify for a bonus every six months on lubricating products only. That is, oils and greases. Then the merchandising salesman can secure a bonus on gasoline sales.

Q. How about yourself? Do you get a bonus of any type on overall sales? A. I work on the same thing as the general salesman, on lubricating oils and greases only, not on gasoline.

Q. And TBA? A. There are no bonuses paid on TBA.

Q. How do you rate your salesmen's performances? A. This through-put report that I get gives me a pretty good indication of what the man is doing so far as the

record is concerned. And I make visits with him to his station to see how he talks with the dealer, approaches a dealer, and see if there are any things at the station that he has overlooked in the way of housekeeping, cleanliness, service to the customers, service on the island.

Q. What is this through-put? A. Through-put is the amount of product that goes through a station in a certain period.

Q. And the salesman reports on those items together with housekeeping problems? (3171) A. No. The through-put report to me covers only gasoline sales, oil sales, grease sales, and total TBA sales.

Q. On those total TBA sales, do they show a breakdown of sponsored products and non-sponsored products? A. No, sir. That is the total TBA sales made by the dealer, taken from his books.

Q. These reports come from the dealers? A. They come from information from the dealers. We go to a dealer and we ask him, in order to help us help you, would you maintain a record of your total sales of gasoline, lubricating oil, greases, and total TBA, and have that information available for us at the end of the month?

Q. And they make such monthly reports to your salesmen? A. It is no report. The salesman goes around and asks have you got those figures, and most dealers will give them to us.

Q. Do they write them up or recite the figures? A. They just recite the figures off of their books apparently.

Q. What does the salesman do with the figures? A. He puts them on a list with other stations in his area and turns them over to me, yes sir.

Q. What do you do with them? A. I look at the report and see if we have had increases or decreases at that particular station?

Q. Do you forward them to the division headquarters? (3172) A. The original of the report goes to the division headquarters. I only have a copy.

Q. In the event a salesman's sales are not up to par, what you consider par, what do you do then? Take petroleum. How do you base your quota for the year, for example? A. On petroleum?

Q. Yes. A. The Denver division office establishes at the beginning of the year the objective, percentage of increase that they feel we ought to shoot for.

Q. Is that usually higher than the preceding year? A. Yes. We couldn't progress if we didn't have it higher.

Q. And the same is true with lubricating products? A. Yes, sir.

Q. And TBA products? A. Yes, sir.

Q. When the salesman fails to meet the standards that have been made—did you say the division office is the one that sets these so-called standards, the quotas? A. For salaried personnel, yes, sir. For all other personnel they establish their own objectives.

Q. What are your duties in regard to seeing that they maintain or attain those quotas as they have been set? A. Actually, I have the same percentage of increase to shoot against, so it is to my interest that my salesmen perform (3173) in such a manner that they make their increases and then I can make my increases.

* * *

(3174) Q. Getting back to the salesmen, what do you do to spur them on to meet their quotas so that you will meet your quota? A. Well, in these informal sales meetings we discuss methods of merchandising, methods of helping a dealer sell more. If a man is having a hard time making his objectives in lubricating oils and grease and

gasoline, I go through his through-put report and find out where his bigger losses are, and ask him what he is doing to correct that condition, and try to help him to correct the condition.

(3175) Q. Do the salesmen sometimes have dealer meetings? A. The salesmen, yes, sir.

Q. Station operator meetings? A. Yes, sir.

Q. How often do they have them? A. They try to have them every 60 to 90 days.

Q. Where are they usually held? A. Previous to the time we built the new bulk plant in Carter Lake, we held them in hotel rooms, generally the Rome Hotel.

Q. Can you give me some idea of what those meetings consisted of? Were all Texas station operators invited to that? A. All in that man's particular area.

Q. All these individual salesmen run their own meetings? A. Yes, sir.

Q. Do each of the salesmen run such meetings? A. Yes, sir.

Q. So that every 60 to 90 days there are about 3 such meetings? A. I should qualify that. The general salesman generally works his meeting in with one of the other merchandising salesmen.

Q. So it is a combined meeting then? A. Yes, sir.

Q. What is the main purpose of the meeting with the Texas (3176) operators? A. The main purpose of course is to improve sales by whatever help our division office furnished us in the way of educational films, product films, product information, possibly new campaigns that are coming up like the spring change-over campaign in the spring, the fall change-over campaign in the fall. We show them the banners and the pamphlets that we are going to issue to them to put up at their station or give out to their customers.

Q. So that is the result, is it, of your discussing quotas with the salesmen in order to spur sales, meet quotas, and they in turn talk to the station operators, and the station operators then get at the public somehow? A. Yes. But I don't think our salesmen tell our dealers the objective that they have. We ask the dealer to set his own objective in sales because we feel that any man in the sales organization, whether he be a dealer, a salesman or a zone manager, should have something to shoot for.

Q. But if you can convince the operator that he should be energetic, and he is, that certainly accrues to the benefit of the salesman and in turn to your benefit. A. Sure.

Q. And right on up? A. Yes.

Q. Suppose the salesman, despite all your encouragement, (3177) fails to meet his quota. What happens then to the salesman? A. That has happened, and nothing has happened to the salesman.

Q. Do you mean that you just go on carrying dead weight on the rolls? A. No. We are able to improve his position to the extent that it is not a problem.

Q. You improve that with every salesman? A. Well, I personally haven't recommended that any salesman under me be fired?

Q. Have they all made their quotas? Is that the reason? A. They have made a good share of their quotas and proved to me that they are energetic enough and trying hard to complete the program.

Q. Isn't it possible that possibly the objective might have been set too high? Would that feature enter into it? A. Sometimes I think all of our objectives are too high.

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(3178) Q. Does the salesman make any reports to you about the activities or appearances at a station? A. Only where that might be a matter of me approving budget

expenditure for improvement of the physical properties to relieve that situation.

Q. To relieve what situation? A. Well, the situation you described that might be improper. I am not sure that I understand your question.

Q. Improper probably was the wrong word. The point I am trying to make is, do these salesmen act as a sort of supervisor over the station. Texaco expects a station to observe a certain standard of cleanliness, conduct, and so on. Is that correct? A. We feel that good housekeeping, good records, good business management, good hours of operation, are necessary to the success of any service station.

Q. Surely. And you do not personally go around and look under every nook and cranny in a station or observe every station. You depend on your salesmen for the information. A. Primarily I make periodic inspection trips. I shouldn't say inspection. All I am doing is going in with the salesman to see how he acts in front of the dealer. At the same time if I see anything that I feel is not good business at the (3179) station, I don't make a point of it at the station. When we get back to the bulk plant we discuss that.

Q. But you have, I am sure, released operators. A. Released?

Q. Yes, That is, recommended that their lease not be renewed, or cancelled them out at the end of the term. A. I sure wouldn't now on account of the dealer shortage. But in my experience in this area, I know of only two leases that have been cancelled, and they were not for the reasons you have described.

Q. What were the reasons? A. One was for proven dishonesty of the dealer in dealing with his customers. The other was because of financial failure of the dealer.

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(3180) Q. What are your salesmen's responsibilities in so far as stations are concerned? A. The prime responsibility of the salesman so far as stations are concerned is to see that that station succeeds.

Q. Do your salesmen report things that go on about the station that do not meet with their approval? A. I would like for you to qualify it. But may I offer this.

Q. Surely. A. At one particular station we were having trouble apparently with hot-rodding, boys pulling into the station and the hot-rod artists, and the neighborhood was complaining. That (3181) matter was brought to my attention. Is that what you would like to know?

Q. Yes. That type of thing. My point was that the salesman was the one who brought it to your attention. A. Yes, sir. In that particular case the neighbor brought it to my attention, too.

Q. Does the salesman have authority or does he ever recommend the promotion, so to speak, of a station operator? In other words, from one spot to another, because it might be a choicer location? A. A change?

Q. Yes. A. We encourage that. We encourage the salesman to always be aware of the potentialities of a station. If a man is in a one-bay station and he is financially capable of and we feel could successfully operate a two-bay station or a highway account or a bigger station, we encourage that.

Q. Can a salesman do the reverse? In other words, if there is an operator in a good, beautiful station and he doesn't think the operator is conducting the business properly, could he recommend that he be put in a smaller station? A. He could. It would occur to me that that would occur only where the man's finances were not large enough to take care of the station that you speak of. We try to take care of the dealer and put him in a particular line

where his (3182) finances would allow him to operate freely.

Q. Does a salesman recommend certain improvements about stations? A. To me?

Q. Yes. A. Yes, sir.

Q. Is it at that time that you go around with the salesman to verify the fact that it is needed? A. That is one of the times. If a salesman came in to me and said, "This station needs an additional lift," I would surely get there just as quick as I could to investigate for myself.

Q. Or black-topping possibly? A. Yes.

Q. Or a paint job? A. We generally leave that up to a salesman. They can tell when a station needs to be painted.

Q. They can order the job on their own authority? A. They can tell me that they are going to have this particular station painted, and approximately the cost. So I can check and see if I have enough budget to handle that.

Mr. Dias: I believe that is all.

Cross-examination by Mr. Lorenzen:

Q. Mr. Burgess, you testified that these merchandise (3183) salesmen spent about 10 or 15 percent of their time in connection with some phase of TBA, and the general salesmen between 5 and 10 percent of their time. Does that have any relation to the fact that the merchandise salesman is assigned primarily to service stations and the general salesman handles also other accounts which don't deal in TBA? A. Yes, sir.

Q. You testified that one of your duties in this position had to do with interpreting the policies as given you by the Denver office. I just want to get that cleared up a little bit, your use of the word "interpret."

Do you mean that you pass those policies along to others? A. Well, in matters of policy my salesmen prob-

ably received a copy of that policy, too. We gather together and review the policy so that there is no misunderstanding.

Q. And do you have anything to do with passing the substance of the policy in so far as it doesn't concern purely the internal operations of your company to the gentlemen who are the dealers and operate service stations for the company? A. Well, I would do that primarily in my final interview, the final interview of the dealer-applicant, yes, sir.

Q. And you do at that time tell him about the company's policy? A. Yes, sir. I attempt to in every case.

Q. Do you tell him anything about TBA? (3184) A. Not as such. I tell him that he is an independent businessman, and as an independent businessman should consider himself the sole manager responsible for that station.

Q. Was that one of the policies which was sent down to you from the Denver office? A. Yes, sir, that has come to me as a policy.

Mr. Lorenzen: I ask to have these four documents marked for identification, please.

The first is a letter dated June 9, 1946, from C. H. Dodson, addressed to State managers, zone representatives, representatives dealer-service, representative dealer-training, lubricating engineers, salesmen-industrial, salesmen-resale, bulk stations, salaried agents, Denver division.

Hearing Examiner Kolb: That may be marked Respondent's Exhibit 14-A, B, and C.

(The document referred to was marked Respondent's Exhibit 14-A, B, and C for identification.)

Mr. Lorenzen: The next document I ask to have marked is entitled, on page 1, "Denver, Colorado, January 14, 1952, Circular Letter Number 355, ad-

dressed to State managers, Denver division," with copies to dealers' service representatives, lubrication engineers, salesmen-industrial, salesmen-resale, and bulk plant agents. Physically annexed to this document is a letter dated January 3, 1952, from the Chicago office, entitled "Circular Letter Number 355." This letter (3185). is dispatched to the division managers.

Hearing Examiner Kolb: That will be marked as Respondents' Exhibits 15-A to E.

(The document referred to was marked Respondents' Exhibits 15-A through E for identification.)

(3186) Mr. Lorenzen: The next document is entitled "Denver, January 7, 1954, Circular Letter No. 389," addressed to station managers, zone managers, Denver Division, with copies to dealers, service representatives, lubrication engineers, all salesmen, and bulk plant agents.

Hearing Examiner Kolb: That will be marked Respondents' Exhibit 16-A to E.

(The document referred to was marked Respondents' Exhibit 16-A to E for identification.)

Mr. Lorenzen: The last one of the set is dated Denver, December 12, 1955, addressed to zone managers, representatives' dealer training, dealer service representatives, merchandising salesmen, general salesmen.

Annexed to it is a two-page printed document entitled "Texas Company TBA Program."

Hearing Examiner Kolb: That may be marked Respondents' Exhibit 17-A, B, and C.

(The document referred to was marked Respondents' Exhibit 17-A, B, and C for identification.)

M. E. Burgess, for Commission—Cross

By Mr. Lorenzen:

Q. Mr. Burgess, I show you a document which has been marked Respondents' Exhibit 14-A for identification and ask you whether that is a document which you received in the course of your employment by the Texas Company? A. Yes, sir.

(3187) Q. And at that time you were a salesman and not a zone manager? A. That is right.

* * *

Q. I show you a document which has been marked Exhibit 16-A through E for identification and ask you whether you received that document and, if so, in what capacity? A. I received this document as a zone manager in Omaha.

Q. I show you now a document which has been marked 17-A through 17-C for identification and ask you whether you (3188) received that document, and if so in what capacity? A. This is the Texas Company's TBA policy. I received this as zone manager and I carry this in my sales development book, as do all salesmen.

Q. Do these documents, 14 through 17, and the various pages marked in each, constitute a part of the policies of the Texas Company which you told Mr. Dias on direct examination it was your duty to carry out? A. Yes, sir.

Q. And have you carried out those policies to the best of your ability? A. Yes, sir, I believe I have.

Q. You testified that there was no one assigned to Omaha who had to do specifically with TBA. Just let me ask you, so we will get this cleared up: There is a chap up there in Denver who has to do with TBA and he sometimes comes down here to help you. Isn't that so? A. Yes, that is right.

Q. What is his name? A. D. B. Underhill.

Q. What is his title? A. I hate to appear dumb but I can't tell you his title.

Mr. Dias: TBA representative?

By Mr. Lorenzen:

Q. Would it be TBA representative? (3189) A. We are glad of his help, I want to assure him.

Q. He does come down here and help you at times about this situation? A. Yes, sir.

Q. I want to go a little more into this salesman's through-put report, particularly so far as it concerns TBA. As I understand it, that report has on it only the total sales or through-put of TBA in the station? A. Yes, sir.

Q. It isn't broken down to show how much Firestone, how much Goodrich, or how much Goodyear, or how much Sidle Company or how much Anderson's Company, anything like that? A. No, sir.

Q. It has just a total figure. A. A total of the TBA sales through that station for that month.

Q. Let me ask you this: Are those figures at cost to the dealer or are they what the dealer tells you he sold the merchandise for? A. They are his sales figures because they come directly from his adding machine tape or business records.

Q. The IBM records which you get from the Denver Division showing sales on which commission is paid are the cost to the dealer and not his sales price of that merchandise, is that right? (3190) A. Yes, sir.

Q. So that those figures are not comparable? A. They are not comparable anyway because the station sells a considerable amount of TBA.

Q. Do you mean in addition to the sponsored line? A. Yes, sir.

Q. And you know that of your own knowledge? A. Yes, sir.

Q. And you have known that right along? A. Yes, sir.

Q. And the dealers about whom you have known that have not been cancelled by you, have they? A. I have already testified, sir, I have only recommended cancelling two leases.

Q. Have you ever recommended the cancellation of a dealer about whom you have known that he has sold TBA other than the sponsored line? A. No, sir.

(Discussion off the record.)

* * *

(3191) Q. Among other efforts you make to obtain dealers you do advertise in the newspapers? A. We advertise in the Omaha World Herald. That is not too successful, and we only do it for this reason primarily: That station, that newspaper has such wide circulation throughout the area surrounding us that I feel we could pick up prospects in small towns. We hunt for our dealers here.

Q. On these objectives which the Denver Division sets, I take it over the course of the years sometimes you make them and sometimes you are below them and sometimes you may even do better? A. Yes, sir.

Q. You testified that you made visits with your salesmen and you said that you noted how they acted in front of the dealer. Do you recall that testimony? A. Yes, sir.

Q. In that connection will you let me know whether in your experience as a zone manager here, in connection with these calls which you have made with your salesmen to the dealers, (3192) you have ever observed any salesmen taking exception to or making any threats to one of the dealers as a result of his TBA activities? A. I don't believe so; no, sir.

Q. Do you know? A. I would know. I don't remember it ever happening.

Q. As far as you know that has never happened? A. That is right.

Q. You testified in some detail about the type of help—not help, exactly, but improvements that you made to stations, like the paint job and black top job and how a dealer might need another hoist. Do you recall testifying about that? A. Yes, sir.

Q. Does your recommendation as to whether or not these improvements are made to the station depend in any way upon the TBA habits of the particular dealer who is at that time operating the station? A. No, sir. My recommendation would be on the basis of gasoline gallonage.

Q. Solely? A. Well, if the man needed a new hoist I would have to show the Denver Division that he had sold more oils and greases than a station with one hoist would ordinarily sell.

Q. So it depends in that case upon the oils and greases? (3193) A. Yes, sir, gasoline oils and greases.

Q. Except for gasoline oils and greases does it depend upon the dealer's TBA habits at all? A. TBA habits in connection with the addition of a hoist, we pay no attention to it. The only time the TBA could come in is if we were going to put in a second hoist, we want to be sure we put in a free-wheel, if they are a roll-on hoist, because it is easier to change tires on a free-wheel hoist rather than roll-on.

Q. You mean indirectly if you gave him that kind of hoist he would be able to sell somebody's TBA better? A. That is right.

Mr. Lorenzen: That is all that I have.

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Redirect examination by Mr. Dias:

Q. You mentioned that Underhill, the TBA representative, renders some help on your TBA sales? A. Yes, sir.

Q. How much help does he give you? A. How much help?

Q. Yes. How often do you have him over? A. I don't have him over. He is assigned by somebody else. (3194) He just comes into my territory whenever somebody sends him here. I suppose if I had a problem I could write to Denver and ask for him. But that hasn't occurred.

Q. Does he just sort of patrol around various sections of the division?

Mr. Lorenzen: I object to that.

By Mr. Dias:

Q. Does he sort of free-lance around? A. He covers the Denver Division which includes five states and a part of another—four states and a part of another.

Q. He is assigned to no place in particular? He just goes from here to there? A. He headquarters in Denver and goes from here to there.

Q. Does he spend all his time on the road? A. I couldn't say that.

Q. When he is working in your territory do you know about it? A. Sometimes I do. If I am in town I know about it. Sometimes I return to my headquarters point and find that he has been here and gone.

Q. You sometimes find out that he has been here and you were in town and didn't know about it? Does that sometimes happen, too? A. If it happened I wouldn't know about it.

Q. Had you heard about it later? That is not quite as foolish as it sounds. (3195) A. I didn't mean to make fun of the question.

Q. Have you ever been in town and later got word that he was in town or in your area the same time that you were in your office and you still didn't know about it? That is my question. A. I can say it might have happened; yes, sir.

Q. I did forget to ask before: Who is your state manager? A. Mr. F. F. Collman.

Q. Do you know the name of the Lincoln zone manager? A. The present zone manager is George C. Holtorf.

Q. You say "present". He has been in that position only a short time? A. I believe he came in there September or October of last year; yes, sir.

Q. You said that your salesmen have never made any threats to these station operators in your presence. Have they ever done any persuading in your presence? A. How do you mean, persuading?

Q. Have they atempted to sell TBA products, Goodrich or Firestone? That is promote the sale of? A. They have attempted to sell the dealer on the fact that he must be in the TBA business to make a success of that particular station.

Q. Is TBA important to a station operator? A. Frankly, sir, I don't believe a station could long (3196) survive without TBA sales.

Q. Then your statement that TBA habits have no bearing on improvements isn't quite accurate, is it? In other words, if a dealer weren't handling any TBA products you wouldn't be apt to make an improvement on the station, or recommend them? A. I have painted some grocery store accounts that handle gasoline and oil only.

Q. But those are unusual type stations, aren't they? They are not gasoline stations in the true sense of the word? A. No.

Q. I am talking about a regular gasoline station, as we know them, generally speaking. If he does not handle any TBA, are you apt to recommend improvements on that type station? A. Any kind of TBA?

Q. Yes. A. I have no station that doesn't handle some kind of TBA, to my knowledge, other than the grocery store account that you have ruled out.

Q. Then your statement is inaccurate, that TBA habits have some bearing on improvements?

Mr. Lorenzen: I think in its context, Mr. Dias, that question was asked in connection with whether he bought Firestone or Goodrich or from Sidle or Anderson or from (3197) some other supplier.

Mr. Dias: Same context as my question. I said any TBA. I am not talking about sponsored.

Mr. Lorenzen: That is right, but I think that was not his answer in its context. His answer said it didn't make any difference from whom they bought their TBA as to whether they got the paint job or the extra hoist or the blacktop.

Mr. Dias: I thought I copied the answer verbatim.

Mr. Lorenzen: You can ask him.

The Witness: If you can read it back I will tell you. But I can tell you now it doesn't make any difference whether a dealer is handling sponsored or unsponsored TBA products. That has no bearing on whether he gets his station painted or any improvements that might be within my budget.

By Mr. Dias:

Q. But you do agree that he should handle some sort in order to make a living? A. Yes, sir.

Q. Do you have any idea of what this TBA representative does when he goes to your territory? A. Well, I be-

lieve he goes to the local offices of the tire companies for some reason. I know that he contacts my salesmen if I am out of town and asks them if they have any problems concerning the merchandising of tires, batteries, (3198) and accessories. I know that he offers his services to me for the same purpose if I feel I have any problems concerning the sale of TBA products, merchandising and display.

Q. Does he make scheduled appearances in your territory? A. Not to my knowledge. They might be scheduled to him, but they are not to me.

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Recross examination by Mr. Lorenzen:

Q. Have you ever had a report that while Mr. Underhill was in town and you didn't know about it ahead of time, or while he was here, that he had any conversation with any salesman or dealer which was contrary to the policies of the Texas Company as you understood them? A. I have had no such report; no, sir.

Mr. Lorenzen: That is all.

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(3200) GLEN CRAMER was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address for the record? A. Glen Cramer, 1621 "M" Street, Lincoln, Nebraska.

Q. And the name of your employer? A. Sidle Company.

Q. What is your position in the Sidle's company? A. Salesman.

Q. How long have you been a salesman for Sidle's? A. About four years.

Q. Will you describe the territory that you cover for Sidle? A. The city territory in the town of Lincoln.

Q. Will you describe briefly the brand, specify the brand of tires that you sell for Sidle? (3201) A. Siberling tires.

Q. And batteries? A. Delco batteries.

Q. And a few of the more common accessories such as filters? A. We carry AC and Fram filters.

Q. Radiator hose and belts? A. Belts, Gates.

Q. Spark plugs? A. AC.

Q. Do you carry a full line of accessories in addition to those that we specified? A. Yes, we do.

Q. What other products do you carry? A. We carry all Perfect Circle rings and Prestone anti-freeze, Kendall oil, and all hard parts concerning cars.

Q. Can you give us an idea of a few of the items that are considered hard parts? A. Well, like your pistons and rings and connecting rod bearings, transmission parts, clutches.

Q. How do you designate mufflers? A. That is more an accessory.

Q. Shock absorbers? A. Shock absorbers.

Q. Do you carry both of those? A. Yes, sir, we do.

(3202) Q. Are there any Texaco and Conoco stations in your sales area? A. Yes, there are.

Q. Can you give us some idea of the number of Texaco stations? A. Four.

Q. Can you give me some idea of the number of Conoco stations? A. Six of them.

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(3203) *By Mr. Dias:*

Q. Do you solicit the business of the four Texaco stations? A. Yes, I do.

Q. Do you sell them any products? A. Some, yes.

Q. What type products? A. We sell them mufflers and tail pipes, some filters, and maybe a few ignition points as they need them.

Q. How many do you sell to? Two? A. No, four.

Q. You sold to all four. Do you sell any of them batteries? A. No.

Q. Do you sell any of them tires? A. No, sir.

Q. Of the six Conoco stations in your area, do you call on any of those? A. Yes, sir.

Q. How many do you call on? A. Four of them.

Q. Have you ever called on all six? A. Yes, sir.

Q. What happened to the other two? A. Well, one is just due to financial status, and one is due to, oh, he is more interested in I think possibly the cafe business he has adjoining.

(3204) Q. You mean they are not interested in TBA? A. No.

Q. Of those four that you sell to, do any of those stations buy your TBA products? A. Just as they need them.

Q. What products do they buy? A. They buy mufflers and tail pipes, ignition points, a few spark plugs, occasionally stop-leak for specific calls—radiator stop-leak.

Q. Do you handle any oil additives or oil products? A. Yes, sir.

Q. Which brand? A. We have Rislone, Casite.

Q. Those are additives? A. Yes.

Q. Did you handle any oils? A. Kendall oil.

Q. Do you sell any of those items to the Texaco stations? A. Yes, we sell a little Rislone, one or two buy some Rislone.

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(3206) Q. Returning to the Conoco stations, Mr. Cramer, do you sell any of them any tires? A. No, sir.

Q. Do you sell any of them batteries? A. No, sir.

Q Of the four Conoco stations, how many buy regularly? A. Three of them.

Q. How often did you make your rounds? A. Weekly.

Q. And of the four Texaco stations, how many buy regularly? A. About two of them.

Q. And do you call on those weekly, also? A. Yes, sir.

Q. The two that do not buy regularly, how often do they buy? Can you give us some idea? A. Well, it varies, depending on how much business they are doing. If they happen to want something immediately for a car that they are working on right then, they buy only when they need something at the time.

(3207) Q. And their purchases at that time, what do they consist of? A. It would be points or possibly a muffler or tail pipe.

Q. Can you give us some idea of the volume of sales to the four Texaco stations? A. Not unless—

Q. In the past year. A. I would estimate it about $200 per month for the four.

Q. Total for the four? A. Yes.

Q. Does that represent normal sales to those stations? Were your sales ever higher to those stations? A. No, they haven't been since I have been in the territory.

Q. In reference to the Conoco stations, can you give us some idea of your monthly volume of sales to the four that you sell to? A. It would run just about the same.

Q. Does that represenf a decline or an increase in business? A. That represents a decline.

Q. When did you sell them more products, or a greater volume? A. In 1955.

Q. Do you have some idea of what your monthly volume was then? A. Close to almost $500 a month.

(3208) Q. Over how long a period would you say that was so? A. I would say for approximately two years before. I can hardly recall.

* * *

Cross-examination by Mr. Barton:

Q. Mr. Cramer, Sidle is not the only seller of automotive parts and accessories in the Lincoln area, is it? A. No, sir.

Q. Ben's Auto Parts is a competitor of yours in that area? A. Yes, sir.

Q. And Hinkeljoy's hardware is a competitor? A. Yes, sir.

Q. And L. J. Messer Company is a competitor? A. Yes, sir.

Q. And F. D. Silson Sales Company is a competitor? A. Yes, sir.

Q. And Carl A. Anderson, Inc., is a competitor? A. Yes, sir.

Q. And Moore's Central Supply is a competitive jobber, isn't it? You don't run into them, I take it. A. No, sir. I don't think so.

Q. And Clover Auto Supply? A. Yes, sir.

(3209) Q. You run into all of these in your area competing with you in selling to these stations, don't you? A. Yes, sir. That's right.

Mr. Barton: That is all.

(3210) *Cross-examination by Mr. Lorenzen:*

Q. Will you give us the name of the four Texaco stations in Lincoln to whom you sell? A. Harris Texaco.

Q. What is the location? A. 11th and "J." Harris Eseuler is his full name—E-s-e-u-l-e-r.

Q. That is one of them? A. That is one of them.

Q. You have some more? A. That's right.

Q. Will you give us the names of the others? A. Larry O'Brien, who doesn't buy too much from me. He is at Tenth and South.

And what used to be Eckhart Texaco but has changed hands now and I can't think of the man's last name now. It is at 13th and "F" Streets.

Q. Charles Sterner, would that be the name? Also Martin Texaco.

Q. Is that at 10th and "L"? A. That's right.

Q. And some other salesman also functions— A. In the City.

Q. (Continuing) —in the City? A. That's right.

(3211) Q. You heard Mr. Barton ask you for the names of your competitors. Of course, you don't know how much each of these stations buys from some of these other companies— A. No, sir.

Q. (Continuing) —that Mr. Barton mentioned.

Mr. Dias: I object. There is no testimony that they buy from them.

Mr. Lorenzen: He said he didn't know.

Hearing Examiner Kolb: Objection overruled. The answer may stand.

By Mr. Lorenzen:

Q. You said you didn't know? A. I don't know.

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(3212) *Redirect examination by Mr. Dias:*

Q. Do you know who Judah Distributor is? A. Yes, sir.

Q. Will you tell us what it is? A. He is the B. F. Goodrich distributor and also has been in business for sometime in the wholesale trade.

Q. In addition to those companies that were named on cross-examination as being competitors, do you also compete with Judah Distributing Company? A. Yes, sir.

Mr. Dias: That is all.

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(3213) CLIFFORD BACKENCAMP was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address for the record? A. Clifford Backencamp, 1621 "N" Street, Lincoln, Nebraska.

Q. By whom are you employed? A. Sidle's Company.

Q. In what capacity? A. Salesman.

Q. How long have you been so employed? A. A year and a half.

Q. What is your territory, Mr. Backencamp? A. All of the east part inside the City limits of Lincoln.

Q. Are there any Texaco and Conoco stations in your sales area? A. Yes, there are.

Q. Will you tell us how many Texaco there are? A. There are—as far as I call on, there are 9 Texaco.

Q. Are there more in the City? In your sales territory, rather? A. Not that I could say right now.

(3214) Q. You call on 9 Texaco, is that correct? A. Yes.

Q. Do you call on them regularly? A. I call on 8 of them regularly.

Q. And the ninth? A. It is a new station. It doesn't pay me to call.

Q. When did that station open? A. It has been opened for a few months now.

Q. Did you try to sell to it when it first opened? A. Yes.

Q. With what result? A. Well, I didn't sell hardly anything except one case of stop-leak that we have, mostly known as.

* * *

Q. Did you sell them any tires? A. No.

Q. Did you sell them any batteries? A. No.

Q. What products were they handling? A. Firestone tires and Firestone batteries.

* * *

(3215) Q. The 8 that you sell regularly, Mr. Backencamp, do you sell them any tires? A. No.

Q. Do you sell them any batteries? A. With the exception of two, there are two of them that I sell batteries to once in a while.

Q. Can you name those two? A. Watts' Texaco and College View Texaco.

Q. How many batteries have you sold to Watts' Texaco in the last year? A. That is—I know of two.

Q. And the College View station? A. Three that I know of there.

Q. Both of those figures were for the year 1956, is that correct? A. For 1956.

Q. How about tires? Do you sell either of those two—you said you don't sell any of them tires? A. No.

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(3216) Q. What brand batteries, if any, do these two stations carry? A. College View Texaco carries Firestone.

Q. And Watts' Texaco? A. Watts' Texaco carries Exide.

Q. On the other five stations that you sell regularly—or is it 6—what products do they buy? A. They buy Fire-

stone tires, Firestone batteries, and part of them, and in part on some of the rest of them, they carry Firestone filters, but some of them also carry other brands.

Q. Is that the situation in regard to those other six that you sell to? A. Some of them, yes.

Q. Can you specify which ones? A. Conover Texaco, at 63rd and Havlock, is strictly Firestone tires, Firestone batteries, Firestone filters, and a number of their shelf items.

Q. What type products do you sell to them? Do you sell to them at all. A. Conover, for instance, I sell stop-leak, radiator cleaner, wheel weights, some AC plugs, and that is about the size of it.

(3217) Q. Can you name the next Texaco station? A. Matthews Texaco, 2304 North 48th.

Q. What do they carry? A. He carries Firestone tires, Firestone batteries, Firestone filters, with the exception of three numbers which he carries in AC.

Q. Do you sell him those? A. I sell him those. That is split between two of us. I sell him part of the time and the other jobber sells him the rest of the time.

Q. Will you explain what you mean by three numbers? A. He carries three numbers of General Motors cars because of customers demanding the type that came on their car.

Q. I don't know anything about this. What do the numbers indicate? A size? A. It indicates a certain size for a certain car.

Q. Do you sell that station anything else? A. I sell him wheel weights, stop-leak, thermostats, and wash mitts—car wash, plus those that I have mentioned before.

Q. Can you name another Texaco station? A. Brown's Texaco is the one I mentioned awhile ago at 53rd or 54th and "O" that I don't call on regularly.

Q. And the next one? A. The next one would be Knudson's Texaco. And that is at (3218) 40th and "A" Streets.

Q. You do not sell him tires. Do you sell him batteries? A. I don't sell him batteries. I don't sell him tires.

Q. What brand do they carry? A. Firestone batteries and Firestone tires.

Q. And accessories? A. They have all the different products in accessories from different jobbers.

Q. What do you sell to him? A. I sell him AC filters, they carry Firestone, AC, and Purolator.

Q. Do you sell them anything else? A. I sell them stop-leak and light bulbs and those AC filters and wheel weights and tube repair material, and points.

Q. What is the next Texaco station that you can name? A. Lyle's Texaco.

Q. Do they buy your tires and batteries? A. No.

Q. Whose tires and batteries do they buy? A. Firestone tires, Firestone batteries.

Q. And accessories? A. They have some of all of them. They have it pretty well scattered out.

Q. What do you sell to them? (3219) A. I sell them a few shelf items like waxes and polishes and stop-leak, and a few hard parts which include water pumps and generators, rebuilt generators and armatures.

Q. Do you have an address on that? A. 33rd and "A".

Q. Can you think of any other Texaco stations? Do you think there are any more in your area? A. Well, there is one at 40th and South that I don't call on. The boys that own it aren't there. Their dad is running it. It is not very substantial.

Q. That will do it.

On Conoco, what are your experiences in connection with Conoco stations? How many are in your territory? A. I think it is 9. I might be mistaken.

Q. How many do you call on? A. Eight. I think it is 8. If it is nine in the territory, I call on 8.

Q. Why is that? A. I have one of them that's just strictly Conoco because of a tie-up with the Company.

Q. Which company? A. With B. F. Goodrich and Continental.

Q. Of those 8, it would be better if you named them. A. Glenn's Conoco, 33rd and Cornhusker.

Q. Next? (3220) A. Do you want both leased and otherwise?

Q. Yes. Any type. A. Krutsinger Conoco, 27th and Holdridge.

Q. Before you go on, what is Glenn's? A leased station? A. That is a leased station.

Q. And Krutsinger? A. That is an independent.

Q. The next Conoco? A. Rhoden's Conoco, 48th and Adams.

Q. Is that leased or independent? A. Leased.

Q. Next? A. Red Wing Service, 48th and "O". That is an independent.

Fleet Wing Service, 5745 "O" Street. That is an independent.

Q. Next? A. Smiley's Conoco, South and Normal.

Q. Is he an independent? A. No, leased.

Q. Next?

Mr. Lorenzen: You asked that question so fast; I don't like to butt into this Conoco thing because I have nothing to do with it, but I do object to the question particularly as to the distinction between leased and independent, because as far as Texas Company certainly goes, everybody (3221) is independent. The policy letters say so and there is no evidence to the contrary. Sometimes we get to using "handles" in these proceedings and they stick even though there is no factual basis for it.

I think once described, a relationship, a legal relationship which is different from leased, I don't think the handle "independent" ought to be attached to it. I would object to the form of the question if it uses that phraseology, even though I do it with hesitancy because I don't want to get into this Conoco thing at all.

Mr. Dias: The only reason I do it is because no one seems to know what a contract station is. I was sidetracked into independent because no one seems to know what a—

Hearing Examiner Kolb: I will overrule the objection. I suggest when you complete the examination you find out from the witness what he means by an independent station.

Mr. Dias: All right.

By Mr. Dias:

Q. That is six. A. The last one was Smiley's Conoco. Mel's Conoco, at 39th and South. That is the one I don't call on.

And then there is Beighley's—I think.

Q. And the address? A. 56th and South.

Q. And the next station? (3222) A. Widick Conoco, at 27th—wait a minute. I can give you that one, too. That is at 27th and Vine.

And Connie's, 27th and "R".

Q. Is that all? A. I think that is it.

Q. What do you understand a leased station to be? A. A leased station is one that is owned or leased from some individual by the oil company, and then re-leased to the man that is running the station.

Q. And your idea of an independent station? A. My idea of an independent station is one that is owned by an

individual and either run by him or somebody that he hires himself and they buy a certain brand of gasoline or oil—gasoline to run through a certain kind of pump. And they can change, could change to another kind if they wanted to.

Q. As to Connie's, is that a station that is owned by an individual or is that a leased station? A. That is a leased station.

Q. And Widick? A. Leased station.

Q. Beighley's? A. Leased.

Q. Starting at the top, Glenn's, do you sell them tires—do you sell any of these people tires, batteries and accessories? (3223) A. I sell Red Wing and Fleet Wing tires.

Q. How many? Can you give us some idea of your volume of business in tires with those two? A. Better on number of tires than a dollar volume.

Q. All right. A. Fleet Wing will run approximately five to ten tires a month.

Red Wing possible two to four tires a month.

Q. Over how long a period has that been the case? A. That has been on an average ever since I have been on the territory.

Q. Are they the only two; or do you sell to others, too? A. That is the only two I sell tires to.

Q. Do you sell any batteries to these stations? A. To the same two stations I sell batteries, plus Krutsinger. I sell batteries to Krutsinger.

Q. Can you give us some idea of the volume there? Red Wing and Fleet Wing and Krutsinger? A. Krutsinger, I probably average a battery a month.

Q. And Fleet Wing? A. Fleet Wing will run about possibly five batteries a month on an average.

Q. Is that Fleet Wing or Red Wing? A. Fleet Wing.

Q. What about Red Wing? (3224) A. Red Wing will run three batteries a month.

Q. Of those Conoco stations that you named, are they the only three that buy any tires, batteries—tires or batteries from you? A. Yes.

Q. Do you sell accessories to all the others? A. Well, yes.

Q. What type accessories, generally speaking? A. Wheel seals and certain products, waxes, polishes, that go on the shelves, for retail, and possible wheel weights, stop-leak, tire repair material. Some of them car washes.

Q. Those stations, other than Red Wing, Fleet Wing and Krutsinger, what brand tires and batteries do they handle? A. They have Goodrich tires, and Goodrich batteries.

Q. Are there any exceptions that you know of, other than those three that you mentioned? A. Krutsinger has Goodyear tires.

Q. You sell batteries to Krutsinger, you sell tires and batteries to Red Wing, and Fleet Wing. Without regard to those three stations, of the others that you mentioned are there any among those that buy—what brand tires and batteries do they buy? A. Goodrich.

Q. All of the others? A. Yes.

(3225) Q. How about accessories? Do you have any idea? A. Most of them handle—all the Conoco stations, of course, handle Fram.

Q. Fram filters? A. Filters.

Q. Do you know who the Goodrich distributor is in your sales territory? A. Judah Distributing Company.

Q. Do you know whether or not Judah is the only Goodrich distributor in your territory? A. I don't know for sure. I think he is.

Q. You don't know? A. I don't know.

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Cross-examination by Mr. Barton:

Q. How many service stations are there in your area? A. I wouldn't want to just pin down an exact figure. Do you want an approximate number?

Q. How many do you call on? A. I call on a total number of accounts, I have 100 accounts—101. I would have to separate them to say just for sure. I have never separated them to pin down to the exact number of stations that I call on.

Q. Do you mean you call on other than service stations? (3226) A. Yes.

Q. What other types of customers? A. Garages.

Q. And would you call on 50 percent of the accounts, service stations and garages in your area, or would it be a higher percentage? A. It would be higher than that.

Q. What would be your estimate of the percentage? A. Of the garages and service stations in my territory?

Q. That's right. A. I call on approximately, I would say 85 percent at least.

Q. So it would be about 125 service stations and garages in your area and you call on 101 of them, is that right? A. Yes. I probably call on a little better percentage than that, then.

* * *

Q. Those 101 accounts that you call on, you don't sell all of them tires, do you? (3227) A. No. Some of them don't carry tires, either.

Q. You don't sell even a majority of them tires, do you? A. Because most of—the biggest percentage in the places I call on are filling stations, and most of them—and the biggest percentage of those are leased, and that is why I don't sell them tires.

Q. Most of them don't handle Siberling tires? A. No.

Q. The Siberling tire is distributed by Sidle's, is it, throughout a very wide area here? A. Yes.

Q. Sidle's is the exclusive distributor of Siberling tires in a four or three state area? A. Yes.

(3228) Q. In your sales territory you are competing in selling to these Texas and Conoco service stations as well as the other customers with Ben's Auto Parts, aren't you? A. Yes.

Q. And with Hinkle-Joyce? A. Yes.

Q. And L. J. Messer? A. Yes.

Q. Who by and large sell the same products you sell, I take it? A. Yes. On the same order products.

Q. Different types perhaps but the— A. The same category.

Q. Same category and different brands? A. That is right.

Q. And the F. B. Wilson Sales Company? A. Yes.

Q. And Carl Anderson? A. Yes.

Q. And Judah? A. Yes.

Q. And Moore's Central Supply? A. I don't know.

Q. You don't know them, either? A. No.

(3229) Q. And Clover Auto Supply? A. Yes.

Q. Are there any others that I haven't named that call on customers along with you? A. Well, I think that pretty well covers most of them.

Q. That is enough, I take it. A. That is a great plenty, yes.

Q. And of course all of them are getting some business out of these retail service stations along with you, aren't they? A. In some stations, yes.

Q. The ones you don't get it in they get it, I suppose? A. Yes.

Q. And where you don't get it they do? A. Each one doesn't buy from too many different jobbers because it gets to be too much of a load to try to keep track of it.

Q. What do you mean it gets too much of a load? A. These guys can't afford to have secretaries and offices to take care of their bookkeeping, so they just simply file it.

Q. Do you mean the service station attendant doesn't have a complete bookkeeping system, so perforce he has to buy from a limited number of suppliers?

Mr. Dias: I object. We have gone beyond direct examination.

(3230) Hearing Examiner Kolb: I believe not. I will overrule the objection.

The Witness: Would you state the question?

By Mr. Barton:

Q. It has been your experience that the service station attendant doesn't have a secretarial staff or an office, and it is necessary for him to somewhat limit his suppliers?

Mr. Dias: I object, your Honor, that is a conclusion of counsel.

Mr. Barton: That was the same question.

Mr. Dias: Not quite, I believe.

Hearing Examiner Kolb: I will let the witness answer.

A. Well, they buy from approximately—most of the guys won't buy from over five or six jobbers.

By Mr. Barton:

Q. And I suppose there are variations even among them on the number? A. It could be, yes.

Mr. Barton: That is all that I have.

By Mr. Lorenzen:

Q. Do you know, of all the Texas stations that you call on, the kind that are leased, when you talked about Conoco. Are they all the leased type station?

Do you want the names? (3231) A. Yes.

Q. Richard Brown, 53rd and "O"? A. Yes.

Q. Don L. Bryam, 48th and Calvert? A. Yes.

Q. F. E. Watt's, 44th and "O"? A. Yes.

Q. And the station you said the father was operating, Heidtbrink? A. Yes.

Q. And Knudson? A. Yes.

Q. And Matthews? A. Yes.

Q. And Sterner—Charles Sterner? A. That is not in my territory.

Q. Did you say you sold him? 13th and "F"? A. No, that is Mr. Cramer.

Q. Lyle Ullstrom? A. Yes.

Q. Do you think that covers them all? A. Yes.

Q. They are all leased? A. Yes.

Q. You said I think that Mr. Watts had Exide batteries. (3232) Is that right? A. Yes.

Q. And you know that because you see them I suppose when you go to call on him? A. I have seen them.

Q. They are on public display with a little stand in front of his station, aren't they? A. The times I have seen them they are along the east wall in his office.

Q. In his office? A. Yes, on the inside.

Q. With one of those stands that has the name "Exide" on it? I guess the battery company gives it to him. Is that it? A. That I couldn't say.

Q. But it was one of those stands? Battery stands? A. They were on a stand.

Q. There is no doubt that they were Exide? You saw that? A. I saw the Exide on the batteries themselves.

Q. In his office? A. Yes.

Q. And by his office you mean the same thing as the sales room? A. Sales room.

Q. The same thing?

(3233) Q. You also testified that quite a few of these people you said bought some accessories from you, and then you said also from all others. I suppose you meant five or six of your competitors? A. I suppose, yes. I don't know which ones and how many each one buys from. But I know that they have bought from other jobbers.

Q. And I suppose among other ways you know that because you see the particular brand name of the merchandise on the shelves when you go in? A. Well, yes.

Q. That would be the easiest way to find out? A. Some of the items on the shelves for retail purposes.

Q. And you associate those with the distributors which are some of the companies called to your attention by Mr. Barton? A. Yes.

Q. And you know who distributes what, so when you see the item you just figure out these fellows must buy from my competitor, is that correct? A. Yes, on a few items.

Q. That is about the way you figure it out? A. Yes.

Q. Would it refresh your recollection any if I suggested to you that you have been selling Siberling tires to Mr. Don L. Bryam at 48th and Calvert? (3234) A. He might have went down to the store and picked some up.

Q. He might? A. Yes, I didn't sell them to him.

Q. And that might also be the case with a few of these others? They might have gone to the store to pick them up? A. That could be.

Q. And you wouldn't know about it? A. I would like to clarify myself there. Once in awhile one of those operators, they do not carry them, they do not have any sign up that they carry them, but they do have customers come in

and ask for them, so they might run down to the store and pick them up.

Q. And when the customers ask for them they come down and get them? A. Yes.

Q. I suppose you are pretty familiar with the Siberling tires, seeing as how you sell them?, Wouldn't you agree with me that general customer acceptance of those tires is down to about one percent of the total market? Just about in that neighborhood? A. That might be if you covered what I refer to as the entire nation or something like that, overall picture of the whole. But as far as our own territory I might say that there was a little difference in that.

Q. You fellows are pretty good salesmen? (3235) A. We think so.

Q. In your experience have you sometimes been maybe too good salesmen and then you have to take some of the merchandise back from somebody who couldn't afford to pay for them? A. I suppose that has happened, yes.

Q. That has happened at times? A. Yes.

Q. Then you have had to, I guess they call it, repossess them? A. I have been pretty lucky so far.

Q. But it has happened in your organization, that you had to do that? A. That is right.

Q. That is because the fellow got over-stocked? A. Yes.

Q. Dollar-wise would you say you did as well or a little better than your fellow salesman, Glen Cramer, who testified, as to how many dollars worth he sold to the four Texaco stations to whom he sold? Would you say you did a little better than he did, maybe? A. On the Texaco stations I would say that my volume hasn't changed any in a year and a half.

Q. He said that, too, and I think he said he sold an average of about $200 a month for the four stations to whom he sold? (3236) A. That would be $50 a month per

station. I would say that that would be awfully close to it, an average of my eight or whatever it was.

Q. That would be pretty close to yours over the average of the year, to all the eight stations. And of course you don't know how much in dollars those stations bought from your other competitors such as the Anderson Company, the Wilson Company, and these other companies that have been mentioned to you? A. No.

Q. You know about the fact that these Texaco stations are leased stations from what? General gossip or conversation in the trade? Or did you look it up or something like that? A. Just mostly the way the fellows who own the stations or run the stations tell you.

Q. You got it from being told? A. Yes.

Q. And you have known that in connection with these stations except the two new ones for a long time, at least as long as you have been in there selling? How long have you been in there? A year and a half? A. A year and a half, approximately.

Q. You have known it substantially throughout that whole time? A. Yes.

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(3237) *Redirect examination by Mr. Dias:*

Q. You were asked several questions about stocking of these brands other than Goodrich and Firestone. Do those stations, Texaco or Conoco stations, have signs or posters in the windows or signs outside, on or about the stations, advertising products other than Goodrich or Firestone? A. Not outside the stations or on the outside of the windows.

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Clifford Backencamp, for Commission—Recross, Redirect

Recross examination by Mr. Lorenzen:

Q. On the inside of the stations they display them in whatever kind of a case the company furnishes them, don't they? I mean the Gates fan belts, they give the dealers a nice-looking sort of a rack with the Gates name on top, and you hang all your belts on there with numbers on them. (3238) Don't you do that? A. Yes, that is inside the station.

Q. That is inside the station? A. Yes.

Q. And a lot of the other products come in, I guess they all come in some kind of boxes with brand names on them, don't they? A. With brand name on them.

Q. And those brand names are displayed inside the stations? A. Some of the products, yes.

Q. I mean there may be some that have no brand names, but those that have it, have it. Let me ask you this: physically is there enough room in the window of one of these filling stations to put up a big poster for every product that these people sell? A. Probably not for all of them, no.

Q. It wouldn't look very nice all cluttered up, either, would it, from the point of view of salesmanship? A. Of course they all work on the same principle, on putting something in the window. They change it from time to time.

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(3239) *Redirect examination by Mr. Dias:*

Q. You were asked whether or not you had ever seen one of these station windows big enough to carry all ads of suppliers? Have you ever seen one that wasn't big enough to carry several ads other than Goodrich or Firestone? (3240) A. You said now that—

Q. Have you ever seen a station, a gas station window, that wasn't large enough to carry more than one ad on it? A. They are mostly large enough to carry more than one ad.

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(3240) GLEN CRAMER was recalled as a witness for the Commission, and, previously having been duly sworn, was further examined and testified as follows:

Direct examination:

Hearing Examiner Kolb: The record will show (3241) Mr. Cramer recalled for further examination, direct examination.

By Mr. Dias:

Q. Will you name the Texaco stations that you sell? A. Name them?

Q. Yes. A. Harris Texaco, 11th and J; Martin Texaco, 10th and L; Chuck Stoner, 13th and F; and the other one I have in my car. It is very rare that he buys anything. It is Larry O'Brien, 10th and South.

Q. Can you tell us what brand tires and batteries those four Texaco stations handle? A. Carry Firestone tires and Firestone batteries.

Q. All four? A. Yes, sir.

Q. Will you name the Conoco stations that you sell to? A. Millard's Conoco, 17th and VanDorn; Peterson Conoco, 17th and M Streets; and Whitey Conoco, 12th and L; Bill Malone's Conoco, 14th and South. He doesn't buy much anymore. And two more I can't think of. Dufoe Conoco, 10th and High. I have another one but I can't think of the name.

Glen Cramer, Recalled, for Commission—Cross

Q. Those five, what brand tires and batteries do they sell? A. B. F. Goodrich tires and batteries.

Q. And the sixth one whose name you can't remember? A. He has the same, B. F. Goodrich.

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(3243) *Cross-examination by Mr. Lorenzen:*

Q. Let's confine ourselves for a moment to something like that, then. Do you ever get in to have a look at Mr. O'Brien's (3244) place of business and see what kind of tires and batteries he has got standing around in his sales room? A. Yes.

Q. And among others they advertise, the brand name is there, on display racks, of Inland tires and Delco batteries. Is that right? A. I haven't been in very recently. There might be at times. I couldn't say.

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(3245) Q. Do you know who sells the Delco batteries and Inland tires in Lincoln? A. We sell Delco batteries, and F. T. Wilson's, also.

Q. F. T. Wilson sells them. Do you happen to know whether in this particular case Mr. O'Brien is a very close personal friend of a salesman by the name of Tracy, I think it is, who represents Wilson and makes regular calls on this chap?

Mr. Dias: How would this witness know that?

Mr. Lorenzen: He is trying to sell this account. He probably knows.

Hearing Examiner Kolb: Ask if he knows.

(3246) The Witness: I know that he calls on them. I know he knows Mr. Tracy but I don't know the relationship.

By Mr. Lorenzen:

Q. You are not sure of the extent to which he buys from him? A. No.

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(3247) VADEN L. O'MARA was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address for the record? A. Vaden L. O'Mara; Carl A. Anderson, Incorporated, Lincoln, Nebraska.

Q. What kind of a business is run by Carl A. Anderson, Inc.? (3248) A. Automotive supplies.

Q. What is your position with that company? A. Salesman.

Q. How long have you been a salesman? A. One year.

Q. What territory do you cover? A. I call on some service stations in Lincoln. Most of my territory is country territory out of town.

Q. What type business do you solicit out of town? A. Mostly independent garages, car dealers, implement dealers.

Q. Service stations? A. Very few.

Q. Do you work on a salary or commission? A. Both.

Q. Are there any Texaco or Conoco stations in your area? A. Yes.

Q. How many Texaco stations are there? A. In town I would estimate between 25 and 30.

Q. Twenty-five to thirty Texaco? A. I would estimate. Out of town I would hesitate to say because I don't call on any.

Q. You don't call on those out of town? A. No.

Q. How many Conoco in your sales area? (3249) A. I would estimate approximately the same.

Q. Twenty-five to thirty? A. Yes.

Q. Are any of these Conoco stations out of town? A. No, I don't believe I call on Conoco stations.

Q. How many of the Texaco stations do you solicit regularly? A. Three.

Q. Do you call on any of the others occasionally? A. I have in the past.

Q. How long ago? A. Approximately from three to six months.

Q. And how many of them did you call on? A. The previous times that I have been out, I would estimate approximately 15.

Q. Why don't you call on them anymore?

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(3250) A. Except for the case of three that on, they really haven't proved to be profitable for me and for my company.

Q. In what way? A. If you aren't selling them any merchandise, it isn't profitable for yourself or for your company.

Q. Were you selling them merchandise? A. Very little, if any.

Q. Of these three that you call on regularly, what type products do you sell them? A. Most of it amounts to ignition, ignition parts, electric parts, carburetors.

Q. Can you name those three Texaco stations? A. Jerry Adams' Texaco—now wait a minute, pardon me. Bob Marten's Texaco.

Mr. Lorenzen: Could we have the address too?

The Witness: Tenth and "L".

By Mr. Dias:

Q. What else? A. Knudson's Texaco, 40th and "A"; Heidtbrink Texaco, 40th and South.

Q. Does your company handle tires? A. No.

Q. How about batteries? (3251) A. Yes.

Q. What brand batteries? A. Auto-Lite.

Q. What brand filters? A. Purolator.

Q. Fan belts? A. Dayton fan belts.

Q. How about hose? A. Radiator hose would be Dayton also.

Q. Spark plugs? A. Auto-Lite spark plugs.

Q. What other type product does your company handle, if any? A. What other type?

Q. Yes. A. Mostly specialized lines, brakes, ignition, carburetion.

Q. How about shock absorbers? A. Shock absorbers.

Q. Mufflers? A. No mufflers.

Q. Tail pipes? A. No.

Q. What products do you sell to Bob Marten's Texaco? A. Ignition parts, spark plugs, some shock absorbers in there.

(3252) Q. Is that all? A. Consistently I would say that would be it.

Q. And Knudson? A. Spark plugs, ignition, fan belts, Auto-Lite batteries.

Q. You do have Auto-Lite batteries? A. Yes.

Q. How many have you sold him? A. I would estimate between 25 and 30 batteries since I have been calling on him.

Q. That is one year? A. Yes.

Q. Heidtbrink? A. Consistently, Purolator would be about the size of it.

Q. Purolator? A. Oil filters.

Q. Anything else? A. Fan belts.

Q. Have you ever tried to sell Marten any batteries? A. Yes, I have.

Q. What brand battery does he carry? A. Firestone.

Q. Sir? A. Firestone.

Q. Have you ever tried to sell Heidtbrink any batteries? A. Yes, I believe I have approached him.

(3253) Q. Did he buy any? A. No, sir.

Q. What brand battery does he carry? A. Firestone.

Q. How many of those Conoco stations do you solicit regularly? A. Two.

Q. Will you name those, please? A. Rhoden Conoco, 48th and I believe it is Adams; and Beighley's Conoco, 56th and South Street.

Q. Have you called on any of the others? A. Yes, in the past I have.

Q. About how many of them? A. Approximately from 10 to 15.

Q. Were you able to sell them anything?

Mr. Barton: Object.

Hearing Examiner Kolb: Objection overruled.

A. Not consistently, no.

By Mr. Dias:

Q. Did they buy anything at all? A. From time to time. But not enough to warrant calling on them consistently.

Q. What type product did you sell to Whoden? A. Ignition, brakes, fuel pump, fittings. Consistently that would be about it.

(3254) Q. Have you ever tried to sell him batteries? A. Yes.

Q. What brand battery do they carry? A. B. F. Goodrich.

Q. What do you sell to Beighley? A. Ignition, carburetion, brakes. That would be just about it.

Q. Have you ever tried to sell them any batteries? A. Yes.

Q. What brand battery do they stock? A. B. F. Goodrich.

Q. Do they carry any other? A. No.

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Cross examination by Mr. Lorenzen:

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(3255) Q. This Anderson Company, its principal line is what you would call automotive parts, like parts used with carburetors and electrical repairs, that sort of thing? A. Primarily, yes.

Q. That is its principal line? A. Yes.

Q. And you sell that line, too? A. Yes. That is the line we represent. That's right.

Q. That is the big bulk of your sales, I suppose, in that line? A. Yes.

Q. And you sell that to garages and other places that repair automobiles? A. Right.

Q. In so far as one of these service stations is in the business of repairing automobiles, they have need for that type of parts, too, and then you sell it to them? A. Right.

Q. And the service stations that don't repair anything wouldn't use that particular type of parts? A. Right.

Q. You said that in addition to these particular kinds of parts, which are called automotive parts, you also sell a limited line of accessories, and that consists of spark (3256) plugs, as I understand it, fan belts, filters? A. Right.

Q. And some batteries? A. Yes.

Q. Is that substantially the line? A. Well, our primary line, right.

Q. Then you testified that you called on 15 of these Texas stations? A. Well, from time to time I have, yes.

Q. Some of them a long time in between? A. Right.

Q. By the way, as to your estimate of the number of Texas stations in the City of Omaha, that was just an estimate you gave us. A. That was in Lincoln.

Q. You hadn't counted them. A. I have never said I counted them.

Q. You wouldn't disagree if the company said they had about 20 Texaco stations; that that might be the correct figure? A. It might be.

Q. Does anybody else from the Anderson Company call on dealers in Lincoln? Texaco dealers? A. Yes.

Q. So that somebody else would be taking some of them and you would take some of them? (3257) A. Right.

Q. You said that you have sold some of this Anderson line to three of the Texaco stations. A. What was that?

Q. You sold some or a part of this Anderson line of automotive goods and accessories to three Texaco stations, and you gave us the names. A. That's right.

Q. You didn't sell any part of the line to other Texaco stations? I mean as a regular proposition? A. No, sir.

Q. That goes for the entire line with its automotive parts and what not? A. Right.

Q. Among the stations that you called on tell me was the one at 48th and Calvert, Don L. Bryam station, was that one you called on? A. What is the name?

Q. I don't know the trade name. It is at 48th and Calvert. I think the chap who operates it is called Bryam —B-r-y-a-m. Is that College View? A. At one time I did, yes.

Q. That is one of those to whom you didn't sell? A. That's right.

Q. Is Richard G. Brown's station at 53rd and "O" another one? (3258) A. I don't believe I have ever solicited him.

Q. You have never called on that one at all.

Is Mr. Essler's, at 11th and "J," is that one that you called on and didn't sell? A. I don't believe I have called on him. Possibly I have.

Q. You don't remember that one either? A. No.

Q. Heidtbrink, that is the station that the preceding witness—I think you were in the courtroom—testified that the old man was operating the station and not the two boys. A. That is correct.

Q. That is the station? A. Yes.

Q. He is buying just a limited amount of TBA from anybody? A. That's right.

Q. Donald R. Knudson at 40th and "A"? A. Right.

Q. He is one you called on and did sell to? A. That's right.

Q. And your sales to him last year were in the neighborhood of maybe $1,200? A. I would estimate approximately that.

Q. How about Robert A. Martens, 10th and "L"? He is one that you said you sold to, too? A. Right.

(3259) Q. Isaac Matthews? Do you call on him, at 2304 East 48th Street? A. That would be North 48th, but I did.

Q. He is one that you didn't sell to? A. Right.

Q. How about L. W. O'Brien? Did you call on him. He is at 10th and South. A. I have.

Q. You didn't sell him? A. No.

Q. Charles Sterner, at 13th and "F." A. No. 13th and "F," I believe is a new operator there.

Q. Lyle Ullstrom, 33rd and "A"? Did you call on him? A. No.

Q. How about Eddy Watts? A. I have.

Q. You didn't sell him? A. No.

Q. You don't know the extent to which these people buy fan belts or spark plugs or batteries or other items from other suppliers, other competing suppliers? You haven't any knowledge of that? A. No.

Q. Mr. Knudson is the one you said you sold your Auto-Lite batteries? (3260) A. Yes.

Q. And he keeps those on his shelf in his sales room with Texaco Motor oil and Tungsol lamps and AC filters and that sort of thing, is that right? A. He possibly did at one time.

Q. On these Texaco dealers to whom you didn't sell, you said you hadn't called on them very many times in your three years that you have been with this company. A. That's right.

Q. Just a few times?

Mr. Dias: How many years?

The Witness: One year that I have been out calling.

By Mr. Lorenzen:

Q. Just one year? A. That's right.

Q. Then on most of these fellows you have only had a chance to call about once, on the ones that you haven't sold? A. No, I have called on them more than once.

Q. You think you have? A. Yes.

Q. How many accounts do you have? A. That would be hard to estimate.

Q. About a hundred? A. Over a period of a year? No, not a hundred.

Q. You don't have as many as a hundred accounts on whom you (3261) are supposed to call? A. You mean the number of accounts?

Q. Yes. A. Yes, counting out of towns, yes.

Q. Total accounts? A. Yes.

Q. More than a hundred maybe? A. Probably more than a hundred?

Q. About how many do you think? A. Around 100, some place. Possibly a few more.

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(3262) *Cross-examination by Mr. Barton:*

Q. How many service stations and other garages and other types of outlets that use your products are located in your area? A. Actually use our products, probably quite a few.

Q. Pardon? A. There would be quite a few.

Q. Several hundred? At least? A. Right.

Q. You call on how many of them regularly? A. That would be probably a little over a hundred of them.

(3263) Q. Would you say you called on about 15 percent of the possible accounts regularly? A. Approximately I would say yes.

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(3264) Q. Your line is essentially a repair ignition and carburetor repair line, isn't it? A. Except for oil filters and spark plugs and batteries, yes.

Q. Which is a sort of side-line to your business? A. No, I wouldn't say it is a sideline.

Q. It is a part of your line? A. Right.

Q. And these places that you don't call on, are they engaged in the car repair business? A. Well, I would say the bulk of them probably aren't.

Q. L. J. Messer is a competitor of yours? A. Yes.

Q. He has representatives in the field who call on the same stations that you call on? A. As far as I know they are, yes.

(3265) Q. And how about Clover Auto Supplies? Do they have representatives in the field calling on the same stations and customers? A. They have representatives out, yes.

Q. Selling in general the same line you are selling? That is the same line you are selling? Different brands, but the same line? A. Yes.

Q. How about Hinkle and Joyce? Do they have people out in the field, salesmen calling on the same accounts? A. I understand they do. I have never run into the fellows.

Q. You don't know who if at all these competitors are selling to in these stations that you are selling to or not? A. Will you repeat that?

Q. You don't know which if any of these competitors are selling to the particular stations to which you sell or those to which you are not selling? A. That is correct.

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KENNETH L. O'MARA was called as a witness for the Commission and, having first been duly sworn, was examined and testified as follows:

(3266) *Direct examination by Mr. Dias*:

Q. Will you state your full name for the record? A. Kenneth L. O'Mara.

Q. Will you state your business address? A. Carl Anderson, Inc., 1637 P Street, Lincoln.

Q. What position do you hold with the Anderson Company? A. Salesman.

Q. What is your sales territory? A. Lincoln and a small territory at the edge of town.

Q. How long have you been with them? A. Since 1940. Sixteen years plus.

Q. Do you work on salary or commission? A. Commission.

Q. Do you sell or attempt to sell the full Anderson line? A. Yes.

Q. Can you tell us the number of Texaco stations in your sales area? A. Well, my territory is divided. I call them three Texaco stations.

Q. What class of customers did you call on? A. About 80 percent fleets. That is roughly.

Q. And the other 20 percent? A. A few filling stations, which is about seven, and then I have a small territory at the edge of town.

(3267) What is in the small territory? What type? A. General trade. Garages.

Q. You say seven stations are all you call on? Seven? A. Yes.

Q. How many Conoco stations are in your sales area? A. I call on one Conoco and I don't believe it is a regular Conoco. I believe he is independent and handles Conoco products. Fleetwing Service, about 56th and O. I believe he is an independent.

Q. Those three Texaco stations, are they all that are in your territory? A. Sir?

Q. Are those all the Texaco stations in your territory? A. That is in my territory. I have only so many and that is it.

Q. Is that one Conoco station all that is in your territory? A. Yes, sir. All that is assigned to me.

Q. Do you sell to these three Texaco stations? A. Yes, sir.

Q. Do you call on them regularly? A. Yes, sir.

Q. What do you sell them? A. Do you want the names?

Q. Yes. (3268) A. Conover Texaco. That is 6300 Havelock Avenue. I have an ignition cabinet, I sell him

brake parts, I sell him Rislone, a few wiper blades. I believe that is roughly about it.

Q. And the next?

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A. Jerry Adams Texaco. That is 10th and R.

Q. What do you sell to Adams? A. I sell him ignition and Purolator filter elements, wiper blades, Rislone, and radiator hose. And a little Zerex, which is an antifreeze.

Q. I think there is a third station. A. Lyle's Texaco, 33rd and A.

Q. What do you sell him? A. A few carburetor parts. We have a carburetor school at our place and we sell him carburetor parts.

Q. Any other products? A. I have sold him some sealed beams, and a little Zerex, too.

Q. And the one Conoco station? (3269) A. That is Fleetwing Service. I believe that is at 56th and O.

Q. And you sell him? A. A little Zerex, a few sealed beams, wiper blades, brake fluid.

Q. Have you tried selling any of those stations batteries? A. Yes. I have approached Conover on batteries, and Jerry Adams on batteries.

Q. Were you able to sell them any? A. No, sir.

Q. At any time? A. No, sir.

Q. Do they handle batteries? A. Yes.

Q. What brand do they carry? A. Firestone.

Q. Did you ever try to sell Lyle's any batteries? A. No, sir.

Q. Have you ever tried to sell Fleetwing batteries? A. Yes.

Q. And you sold them none? A. I sold him three about two years ago, and haven't sold him any since.

Q. What brand batteries does he carry? A. Delco. That was Fleetwing?

(3270) Q. Yes. A. Yes.

Q. Mr. O'Mara, do you know whether or not the Conover station is a leased station? A. I believe his father owns the building and I believe Texaco leases the building from his father. I believe that is the way it is. I believe that he leases from Texaco again.

Q. What about Jerry Adams? A. I believe he could be called a lessee.

Mr. Dias: That is all.

Cross-examination by Mr. Lorenzen:

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Q. This Adams chap who buys from you, he has bought from you for several years, hasn't he? A. Yes, sir.

Q. And would you say his volume was somewhere in the neighborhod of $2,000 a year? A. I would roughly say $125 a month, yes. That (3271) would be—

Q. About $1800? A. That is pretty close. $1500 or $1600, I would say, roughly.

Q. And Conover about $3,000, in that neighborhood? A. That is possible. If I was going to guess, I would say $2400, something like that.

Q. It might be a little more? A. It is possible.

Q. What kind of filters, oil filters, did you sell to Mr. Adams? A. Purolator.

Q. And he stocks quite a few of those? A. Yes, sir.

Q. And keeps them on a shelf with his other filters? A. Yes, sir.

Q. They come in a box that says Purolator on them? A. Right.

Q. Do you sell Modac fan belts? A. No, sir.

Q. Somebody else does? A. Yes.

Q. I suppose you have seen those up there in Mr. Lyle Ullstrom's station? A. Yes.

(3272) Q. He has them hanging on a rack with the sleeve Modac on them? A. Yes.

Q. What kind of wiper blades do you sell? A. Trico.

Q. Under those Madoc fan belts Mr. Ullstrom keeps that nice little cabinet you gave him with the Trico windshield washer service? A. Wiper blades. He keeps that inside, I believe.

Q. That's right. You usually hang the fan belts inside too, don't you? A. Yes.

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(3273) Q. Is that the display of the Ullstrom station about which heretofore you have testified, as of the last time you were there when you had a look at it? A. I would say this one when I set the display up, or when he set it up, it was on the inside office. It wasn't under the—underneath the fan belts. Wait a minute; (3274) this is inside. That is hoses on the outside. Yes, that is right.

Q. That is the display as you saw it? A. Right. I was thinking of the hoses on the outer lube.

Q. Do you have any other salesmen beside you two O'Maras who call on some of these dealers in Texaco stations in Lincoln? A. Do you mean do we have any competitors calling on them? No.

Q. No. Of your own company. A. No, I believe we are the only ones who call on stations from our company.

Q. Are there some stations that are office accounts on which neither one of you have the good fortune of getting a commission? A. My territory is limited. I mean they specify that I call on these eight, or rather seven stations, and I call on them and that is it.

Q. You wouldn't know anything about the station of Mr. Duane Ellison, at 17th and South? A. I am sorry. I missed him. I do call on him.

Q. You did miss him? A. Yes.

Q. It will happen, especially when you are testifying from memory like that. You have been selling him for maybe (3275) five years? A. About. Well, I have called on him approximately two and a half years.

Q. And you have been selling him since that time? A. Yes.

Q. His volume is about the same as Adams, in the neighborhood of— A. About $125 a month.

Q. About $1800?

(No response.)

Mr. Lorenzen: That is all.

By Mr. Barton:

Q. Did you say you had a carburetor school? A. Yes, sir.

Q. You would bring the station operators and other customers into this school to teach them how to repair and utilize your carburetors in their repair work? A. Yes, sir.

Q. Of course you found that was useful in connection with your sales efforts. A. Yes, sir.

Q. There was a tendency on the part of the station operators when they had learned their trade, so to speak, in your school, to favor you with their business I take it? A. Yes, sir.

(3276) Q. And in connection with Fleetwing Service, I think you testified that he had Auto-Lite batteries? A. Delco.

Q. Which he bought from Sidle? A. Someone else. We don't have Delco. Either Sidle or Wilson.

Q. Was that the reason you couldn't sell him your brand? A. Basically, yes.

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Redirect examination by Mr. Dias:

Q. You were asked about the Adams account on cross examination, Mr. O'Mara. Do you sell Adams any anti-freeze? A. I sell him ordinarily a future order in the Fall.

Q. Does he stock it openly?

Mr. Lorenzen: I object to that characterization.

By Mr. Dias:

Q. Does he stock it on the shelves in the storeroom? A. He stocks it in the storeroom.

Q. In the storeroom? A. Yes.

Q. Where is it stored? Where is the storeroom? A. Next to the lube room. In other words, you have your front show room and then you have your lube room and then you have this office or storeroom. It is an office and (3277) storeroom.

Q. Is it a place where the public generally can go? A. I would say No.

Q. Have you ever tried to sell him batteries? A. Yes, sir.

Q. Has he given you any reason why he wouldn't buy batteries? A. No. He just said he would think it over, something to that effect, but he never buys them.

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Kenneth L. O'Mara, for Commission—Recross

D. B. Underhill, for Commission—Direct

Recross examination by Mr. Lorenzen:

Q. Do you sell this Mr. Adams, about whom you were just asked, Tungsol? A. Yes, sir.

Q. Auto lamps? A. Sealed beams and bulbs.

Q. And something called Tungsol vision-aid headlamps? A. They are headlamps, sealed beams. They are all the same.

Q. Do you remember all the same—do you remember does he have that display of Tungsol auto lamps in his sales room right over a map of the city of Lincoln, which he has in there, too, and also a picture of his children? A. Yes, he has a picture of his children.

(3278) Q. Do you remember on the shelf right above that he has this display of Tungsol lamps? A. Right.

* * *

(3280) D. B. UNDERHILL was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Dias:

Q. Please state your full name and address? A. D. B. Underhill.

Q. And your position with the Texaco Company? A. I am the TBA representative.

Q. For what area or district? A. For the Denver division.

Q. How long have you served in that capacity? A. I was appointed to that assignment on December 14, 1954.

Q. Where is your home office? Is it in Denver? A. Denver.

Q. You work out of Denver, is that correct? A. That is correct.

Q. What are your duties? A. That is going to be difficult to define. Would you like me to describe the job?

Q. Yes. A. I think we should start with our personnel. I work with (3281) both classes of salesmen, all our salesmen, the zone managers and the station managers. And then our suppliers I work with their district personnel, with their territory managers, their stores, and store salesmen, and try to coordinate the programs and projects and aims of both.

Q. Let me interrupt.

Suppliers—district personnel and stores and store salesmen? You are talking about the supplier stores? A. The suppliers.

Q. For example, a Goodrich store or Firestone store? A. That is right.

Q. Go ahead. A. I attend our Texas Company meetings and then carry the information and the programs to the suppliers' people. I attend their meetings and meet with them and carry their information to our people in the field.

And then I work with the dealers.

Q. Station operators? A. Our station operators. And in working with the station operators possibly we should start with that inventory guide because stock control is most important to the success of the station operator. It has many ramifications. It can save the dealer a lot of money. It will keep his stock at a minimum so that he will have enough stock not to miss sales without being overstocked, and the use of that Guide (3282) will do that, a proper application of it. It will eliminate his losses, losses due to carelessness, losses due to external theft and outside pilferage. It will save him a lot of money.

And it embraces displays, particularly in the accessory field since the average dealer in the total volume of his TBA accessories will be 50 percent or more. So it becomes

important to have the right displays, to have the impulse items displayed in the proper places so that they will sell themselves.

It embraces many things, even down to the man's bookkeeping. Since, for example, tires are a big ticket item, it is important that he not overextend himself creditwise. It is important that he have a credit control system.

Those things we work with them on. Displays of tires and tire sales, special promotions, advertising. Those things we deal with.

Q. Do you talk to the dealers themselves and encourage them to observe the recommendations set out in the Inventory Guide? A. Yes, sir, I do. Normally whenever it is possible I would go into one of our stations with our salesman or our zone manager or whoever works with that particular account. Sometimes that is possible; sometimes it isn't.

Q. Would that also include the rubber company representative? (3283) A. At times.

Q. Go ahead. I hope you don't mind my interrupting. A. No. I am just a little bit lost right now with my trend of thought.

Advertising would include our advertising and if the man happened to be buying either Goodrich or Firestone it would include their advertising programs and promotions. And we would talk about solicitation and tire spotting up and down the streets and in parking lots and the supermarket parking lots.

Q. What do you mean by that? Check to see what is on the card? Is that the idea? A. That is correct. Just walk by the car and see if he has a need for tires and if he has, either leave the advertising in the car or on the car or follow up that and check to see who the vehicle belongs to, and follow up with the individual either by phone or personally.

At one time or another quite frequently we not only talk about these things but we get out and actually do these things. I become involved in it primarily from the standpoint of educating both the dealer and our personnel who are working with him, figuring that he in turn, our personnel, our man, will carry it farther with the other dealers who might need such programs and procedures.

Q. In connection with advertising, do you ever engage in (3284) any cooperative advertising with the stations? A. The rubber companies do quite a bit of that. Our company doesn't. Frankly, I was thinking of advertising in the sense that the dealer needs to do advertising.

Q. Newspaper or radio? A. Newspapers, radio, direct mail; many different methods. We go into such things as circle service, not only from the standpoint of theory but in actual practice.

Q. What is that circle service? A. Circle service is the procedure of approaching the car and the customer and working around the car in such a manner as to reveal the motorist's needs, whatever he might need would show up in that type of servicing. It has been a program of ours, I guess, ever since there was a Texas Company. And it works. It sells merchandise.

Q. May we refer back a minute to the inventory guide? Do you have any idea of the cost of an original basic stock? Take a station just freshly opened. As I remember, there are three different recommendations, depending on the size of the station? A. That is correct.

Q. A new man would go in. I assume he would start with Recommendation No. 1. That's the smaller of the two lines, is that correct? A. That might possibly be correct. It could be any of the three.

(3285) I don't believe that you could put your finger on any particular dollar valuation of a needed stock. Those are recommendations only and as an example in I believe

the current books that they use I don't believe the 14-inch tires, for example, show up in there. And many other items the same. And of course there are lots of changes in the automotive field so that there is going to be a constant change in items and sizes and types and the book itself wouldn't keep up with that.

Q. The real point of my question though is this: In sponsoring the Goodrich and Firestone line do you recommend to the dealer that it will be to his advantage to take one of those lines, that is, the basic stock that is recommended? A. Oh, definitely. I would recommend whichever one of the two that he preferred. However, it wouldn't stop there. If he had a preference in some other direction it wouldn't be frowned on.

Q. I am talking about the type items. Certainly your experience has indicated that you can tell him that he needed so many filters and so on? A. Yes.

Q. It would be a good idea to start off with that? A. I could make a recommendation as could possibly anyone in our organization or in the supplier's organization. It would be a matter of combining the dealer's experience and (3286) the rubber company's experience which would be reflected in those recommendations. If the man asked advice about a particular number of items I would make my best estimate.

Q. How about the stations when they first open up, aren't they usually pretty well equipped with TBA products? A. I would say that they would have to be well-stocked in order to be successful. The station has to look like it is in business in order for it to attract new customers to come in.

Q. The idea of just opening up a gas station and peddling gas and oil, and wait until you have enough money to buy TBA is a thing of the past? A. That is a thing of

the past. I can give a good example of that in this way: A dealer just selling gasoline let's say in a given marketing area might make four cents a gallon. That would be his average net return, not on gasoline but on total volume of business it would average out that much per gallon throughput.

The dealer doing a well-balanced TBA business could increase that net return per gallon to say 14 cents or greater. Do I make myself clear on that?

Q. I assume that is on the basis of so many pennry returns per sale of TBA along with your gas sales? A. That is right.

Q. Do you meet with new or prospective station operators? (3287) A. I have. Normally, I wouldn't. It would be just happenstance. If I happened to be in any particular bulk plant or bulk plant office when the man just wandered in for an appointment we will say with the salesman or the zone manager, if I were there normally he would invite me to sit down and sit in on the discussion.

Q. Are you a sort of trouble-shooter in your capacity as a TBA representative? A. Yes, that could be claimed, too.

Q. You travel throughout your division, as I understand it? A. Four and a half state.

Q. Do you make regular rounds? A. No.

Q. How do you determine when you go out? A. It would—the project would largely determine it, or any program that might be going into effect, or some need, or some request from someone, which happens.

Q. What type request or need would you respond to? A. I can give you a concrete example. In one area several of the dealers were thinking of some unusual promotion, tire sale, and wanted some help. I went over there and worked it out with the dealers and with our salesman.

Q. Do you remember what kind of tires they were? A. Yes. As a matter of fact, I can think of it. Some were (3288) Firestone and some were Goodrich. And it was more or less a joint promotion. However, if it would clarify it any—

Q. No.

Mr. Lorenzen: Let him finish.

The Witness: I carried on a very similar promotion, spent better than three days on it, and it was entirely Goodyear.

By Mr. Dias:

Q. What else? A. I have just about run out on that answer.

Q. Is it very often that you run that sort of program for Goodyear? A. No. Of course not. You would have to be requested. We wouldn't probably solicit it. But if we were asked, we would be very agreeable to doing it.

Q. Can you give us some other idea? Are there any other type things that you do in traveling around the field? A. I think probably, and due to the large area, the bulk of the work has to do with our personnel and with also the supplier's personnel.

Q. Do you ever attend these salesmen's meetings? A. Yes. Very often. Any time I am in the area where they are holding a meeting, they almost always would invite me to attend.

Q. Are there rubber company representatives there at that (3289) time? A. It depends on the type of meeting. For example, our larger spring dealer meetings and so on there are always representatives of both rubber companies.

Q. Do you have anybody working with you as a TBA representative? Do you have anybody else working with you? Do you have a staff? A. No. We do have at our Denver office a TBA clerk who handles the bookkeeping, so to speak, the records.

Q. Who else in that? That would be a home field office? A. That is correct. The division office. We have a TBA clerk and that is a full-time job with him, working on records and correspondence and that sort of thing. I assume that possibly my superior, assistant division manager, sales promotion. And possibly you could count him in as quite a proportion of his time and his clerical help his secretary and stenographer and some of the other clerks would help out at times.

Q. That would certainly be on a minor basis, wouldn't it? A. Frankly, I can't say. I am out on the road and in the field so much of the time that I don't have an accurate picture of all the things that transpire in the office.

Q. As far as you know, though, there is only one full-time TBA person assigned in the division, that is, whose duties concern only TBA, and that is the TBA clerk? (3290) A. That is right. The rest of it of course there are a myriad of accounting people that formulate those records, along with many others, also.

Q. You mentioned that accessory sales represented 50 percent of your TBA sales. Is that your testimony? A. Fifty percent or greater with the average dealer. There are large tire dealers of course where that wouldn't apply. But the average small dealer that would be 50 to 60 percent of his total TBA volume, the accessory and the business.

Q. How did you arrive at that figure? A. Normally, experience. However, I believe that industry information would probably come pretty close to it. I can't quote any

particular statistics. As I say, that is primarily experience from working with a lot of dealers.

Q. What industry statistics do you refer to? A. I am thinking in terms possibly of petroleum marketers or some such group of information gathering people. As I say, I haven't seen figures that would come to any particular percentage figure. That is my own personal estimate. But I believe that you have our profit computer. I believe our new one for this year will come close to that. And I haven't had an opportunity to examine it. But I believe it will.

Q. You mentioned that this new profit computer would arrive at somewhat close to that figure? A. I think it will.

(3291) Q. Who makes that up? A. Petroleum Marketers.

Q. Petroleum Marketers. A. Yes.

Q. Do you have any idea of what they base their figures on? A. Surveys.

Q. Have you seen those surveys? A. I don't know how they handle them at all. They are used, they are known as a reliable source of information and used widely by many firms.

Q. What accessories would be included among them? A. Fan belts, radiator hose, filter cartridges, light bulbs and sealed beams, chrome, glass, polishes, washes, chemicals, chains, many items.

Q. How about things like mufflers and exhausts? A. I think that that could be included. That is somewhat doubtful. Some of those items can be classified as parts, or they can be classified as accessories. It depends on who is looking at it and why.

Mr. Dias: That is all.

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D. B. Underhill, for Commission—Cross

(3292) *Cross-examination by Mr. Barton:*

Q. I think you indicated something about Circle Service and said that it works and sells merchandise. I would like to know a little bit more about that, how it works and how it sells merchandise. (3293) A. The attendant serving the car approaches the car from the lefthand or driver's side. As he takes the order he cleans that half of the windshield. Then he goes back to the gas tank to fill the order. As he goes so he glances at the tires. As he works his way around the car he glances at the rest of the tires as he cleans the glass. It brings him under the hood where he checks the oil. He at that same time would check the battery and note the condition of the battery cable. He would reach in and turn the fan belt, to see if it were cracked or damaged. He would squeeze the radiator hose to see if it was in good condition, and that the connections were tight, that there were no leaks and so on.

It is amazing what one will find that is needed by the motorist, and it is probably the best method for learning those things when the man draws it to the attention of the motorist and makes the sale.

Mr. Barton: That is all I have.

Cross-examination by Mr. Lorenzen:

Q. Has the average new dealer who gets in as far as you have any experience in that connection has experience with the type of merchandising that you are talking about? A. Quite often not. Sometimes the man might be an experienced dealer. But the odds are that he can use and wants lots of help and training.

Q. Does the Texas Company afford him that type of help and (3294) training? A. Yes. Very definitely.

Mr. Lorenzen: That is all.

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William E. McDaniel, for Commission—Direct

WILLIAM E. McDANIEL was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address? A. William E. McDaniel, B. F. Goodrich Company, Omaha, Nebraska.

Q. And your title, please? A. District manager.

Q. How long have you been district manager? A. Since November, 1952.

Q. What territory is in your district? A. All of the State of Nebraska, with the exception of the Pan Handle, 17 counties in the southern part of South Dakota, all of the State of Iowa, with the exception of two northern tiers of counties, and the western tier of counties in (3295) Illinois.

Q. Can you define the Pan Handle, please? A. That is that section of Nebraska in the northwest section, northwest corner. It falls in our Denver district.

Q. Will you state what your duties are, please? A. I am responsible for the administration of the company's policies as they apply to sales, operating and credits.

Q. Are you in charge of TBA programs, too, or is that within your jurisdiction? A. Yes, it is.

Q. Specifically or generally? A. Generally.

* * *

(3301) Q. Do you report to the Conoco Oil Company out of your office? That is, report the purchases of the Conoco stations to the Conoco Oil Company? A. From our office we do not; no, sir.

Q. Which Goodrich of the Goodrich offices makes that type report? A. The report actually comes from the sup-

ply point as to the purchases of individual Conoco or Texaco accounts. It (3302) is forwarded to our zone accounting office in Kansas City.

Q. Rather than through your office? A. That's right.

Q. So that you have no formal record of the number of stations in this city? A. I do, by report that is sent back to me from zone accounting, which indicates the purchases of the individual stations. It would be just a matter of adding them up.

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(3305) *By Mr. Dias*:

Q. Do you or any of your personnel from this office attend dealer meetings with the oil company representatives? A. Representatives and dealers?

Q. Yes. A. Yes, we do.

Q. Who does that? A. In some cases I would be in attendance. However territory managers and wholesale supervisor, other staff (3306) people, they attend whenever they are invited and whenever they can.

Q. Do you or your personnel look for new station business without waiting for word from Texaco, for example? A. Very definitely.

Q. Without waiting for word from Conoco? A. Yes, sir.

Q. Isn't it true that you normally get a lead on those new stations or new outlets from the Texas people or Conoco people? A. At times we do, and at times we determine who the operator might be ourselves from investigation in the field and then contact the oil company and ask them whether or not we have the right information on the operator that is about to be selected.

(3307) Q. Generally speaking, don't they notify you? Doesn't it happen more generally than not that you receive your first notice from the oil company? A. I think

it is a sort of mutual thing. If the territory manager is doing his job he will certainly see a new service station being constructed in his territory. We feel that even before the signs go on the station that we would like to have him know who is putting up that service station. So I don't think I could say that we hear from the oil company more times than we might dig the information out ourselves. I think it is just a combination of both.

Q. I am referring now only to Texaco and Conoco oil stations. Your answer is the same? A. Yes.

Q. What about this difficulty that Texas has in finding an operator? In other words, can you ferret out the operator before Texaco does? A. Not necessarily. We have at times been of some assistance. We have referred individuals that we might feel would make a good operator to the Texaco or Conoco people for their investigation and scrutiny. How many times those selections are made I couldn't tell you. But we like to work with them, do work with them, and would help them in any way to find a satisfactory outlet.

Q. On those occasions then when you do receive notice of (3308) the opening of a new station, or the appointment of a new operator, how do you receive that notification? A. Usually word of mouth or by phone. Most times it would be from the salesman, the oil company salesman to our salesman or to our supply point.

Q. And you receive that information before the operator opens his doors. Is that right? A. Usually, when we get it that way, yes. That is in the case of a brand new station.

Q. Doesn't the same thing happen when there is an anticipated operator taking over a station? A. Well, as I know the oil companies and the way they like to conduct their business, on the basis of a take-over, they don't like

to shut the station down. So actually they could change operators—

Q. Without ever shutting the doors? A. Without the station ever closing.

Q. Then I will change the question. The minute a new operator moves in? A. That would be a little clearer; yes, sir.

Q. Do you know whether or not there are oil additives connected with that TBA program? A. In our line?

Q. As an approved item, yes? A. Yes, there is.

(3309) Q. Do you have a printed list of these items that are on the approved list of the accessories?

Mr. Barton: What do you mean by "approved list"?

Mr. Dias: Those that—

Mr. Barton: Those on which sales commissions are paid?

Mr. Dias: Yes.

A. We have a regular automotive accessory catalogue that is available to all classes of trade. I am sure that every item that is in this catalogue would be on the approved list. It is a matter of searching out each one. I can't think of any that wouldn't be.

By Mr. Dias:

Q. You understand what I mean by the approved list. Those items on which commission is paid to Texaco or Conoco?

Mr. Barton: Do you want a list—this is not the complete list but a list of the major items. If you want it I will read it into the record.

Mr. Dias: All right.

Mr. Barton: If there are any additions they can be added.

B. F. Goodrich tires, B. F. Goodrich batteries, Fram filters, Champion spark plugs, Trico and Anco wiper blades, Dil and Schraeder, the DuPont line of waxes, Simonize line of waxes, Macs and Johnsons, all of which are in the (3310) wax and polish line, the radiator chemical line of both DuPont and Warner.

Let me ask, what is that radiator chemical line?

The Witness: That would be radiator flush, stop leak, and rust inhibitor.

Mr. Barton: Stop-leak is a generic term, not a trade name?

The Witness: That is right.

Mr. Barton: B. F. Goodrich fan belts; radiator hose, B. F. Goodrich; seat covers, B. F. Goodrich, and Fulmer; gas and radiator caps, Stant Everseal; automotive bulbs, Westinghouse. They are called sealed beam?

The Witness: Sealed beam replacement bulbs.

Thermostats, which is Dole; B. F. Goodrich repair materials—what is that?

The Witness: Tire repair materials, tube repair kits, boots, patches of various sizes.

Mr. Barton: The Yankee line of mirrors—rear view mirror and side view mirror; Fufftex twin floor mats; the oil additives in the casite, Hastings and Pyroil lines; rail back flashlights and batteries, and anti-freeze of two permanent types—Peak and B. F. Goodrich, and an alcohol base Norway; battery cables, Auto-Lite.

As I understand it, there may be other items which are not on this list.

(3311) The Witness: There are little chrome gadget items such as fender guards and things of that nature. You certainly hit the bulk of them there.

By Mr. Dias:

Q. I don't think it is on there. How about station equipment—spark plug cleaners, battery chargers and supplies? A. We sell battery chargers, but that is about the only item.

Q. And are they on the approved list? A. No, they are not.

Mr. Barton: What is that?

The Witness: Battery chargers.

Mr. Barton: And camelback, when used for recapping, is on the commission list, is it not, under the contract?

The Witness: I am sure it is.

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(3312) Q. In the Omaha and Lincoln area do the salesmen of your designated supply points also call on Texaco and Conoco stations? A. Yes, they do.

Q. Do Goodrich home—do you have a staff of salesmen here, too? Assigned to your office? A. Yes, we have ten salesmen.

Q. Do they call on these Texaco and Conoco stations? A. Occasionally.

Q. That is not on their regular sale route? A. No. Not in that sense of the word. Our salesman calls on the direct purchaser from us.

Q. Give us an example. What type? A. Any account that we sell, that the Goodrich Company sells on a direct basis, which we carry on our books and make a shipment

out of our warehouse here or the Kansas City master warehouse. The type dealer that you are referring to (3313) in the case of a majority of the Texaco and Conoco accounts is what we class as associate dealers and they are serviced by a supply point. And the supply point does the delivering, carries the credit and so forth.

(3314) Q. But occasionally your salesmen go out and assist the salesmen of the supply point? A. Very definitely.

Q. Did you describe for us the territory manager? A. I don't know that I have.

Q. Would you do that, please? A. The territory manager is responsible for the sale of B. F. Goodrich products in a prescribed area. He calls on all classes of trade within that area. He works on a firm quota basis and continually strives to increase and improve the company's business within the area and exceed the quota assigned him.

Q. Does he work with the oil companies in any way? A. He very definitely does, yes.

Q. Is he primarily concerned with oil companies? A. Not primarily.

Q. That is one of his duties? A. Yes, sir.

Q. How about the wholesale supervisor? Didn't you say that he was primarily concerned with TBA? A. He is primarily concerned with all wholesale activities, of which certainly the sale of TBA would be a very important part. However, he is in charge of the territory managers and he supervises their activities and the sale of TBA to all classes of trade.

(3315) Q. I think you did tell us there were ten territory managers. A. That's right.

Mr. Barton: I think you may be confused. The salesmen and the territorial managers are the same people.

William E. McDaniel, for Commission—Cross

Victor L. Toft, for Commission—Direct

Mr. Dias: They are?

The Witness: The salesman is the territorial manager.

Mr. Dias: That is all.

Cross-examination by Mr. Barton:

Q. Mr. McDaniel, Judah Distributing Company and Chris Beck Tire Company, and Automotive Supplies, Inc., are your supply points for Conoco and Texaco stations in this area. They are independent distributors just like Sidle Company except they are smaller than Sidle Company. A. That's right.

Mr. Barton: That is all.

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(3320) VICTOR L. TOFT was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address for the record? A. Victor L. Toft, 73rd and Pacific, Omaha.

Q. And that is Sidles' Company? A. That is correct.

Q. How long have you been with Sidles? A. Since 1929.

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(3321) Q. What type operation is Sidles, Mr. Toft? A. It is a distributing organization which is divided into three divisions, one of which handles the distribution of automotive parts, supplies, garage equipment.

The second division would be household appliances of all kinds; and the third division handles heating and air conditioning.

Q. In the automotive division do you handle tires, batteries and accessories? A. Yes, we do.

Q. What brand tires do you handle? A. Siberling.

Q. Batteries? A. Delco.

Q. And among some of the more popular accessories, filters? A. Fram and AC filters; Gates rubber products.

(3322) Q. How about windshield wiper equipment? A. Anco.

Q. Do you also handle repair parts? A. Yes, parts of all descriptions for trucks, buses, tractors, passenger cars. We handle Thompson products in engine and chassis parts, Perfect Circle piston rings, Walker Manufacturing Company mufflers and tail pipes, Gates rubber products, Raybestos brake lining, things of that sort.

Q. What type customer do you sell to in the automotive field? A. Every type that handles automotive products, whether that be a car dealer, garage, service station.

Q. Does the company sell equipment of any type? Automotive? A. Every type of equipment that is used in a car dealership, garage, service station, we sell.

* * *

(3323) Q. Can you state the amount of annual volume of business in the automotive end of your business, Sidles' business, from 1952 to 1956? (3324) A. Do you mean by years?

Q. Yes, sir. A. You are referring to the automotive division?

Q. Just the automotive division. A. The figures I will give you are those which pertain to the wholly-owned operations, and not the subsidiaries.

Q. That would exclude those five listed at the bottom of the exhibit? A. That is correct.

In 1952, $8,781,000; 1953, $8,702,000; 1954, $8,150,000; 1955, $8,700,000; 1956, $8,500,000.

* * *

Q. Do you consider that a decline in business over 1955 and '56?

* * *

(3325) A. I would consider that a decline in view of the fact that the vehicle registration in the State of Nebraska since 1952 has increased by 45 percent, according to published figures.

* * *

Q. Do you employ salesmen? A. Yes.

Q. Outside salesmen? A. Yes.

Q. Can you tell me how many you have? A. We employ 77 salesmen in the automotive division.

Q. How are they— A. And 13 additional salesmen in the subsidiary automotive branches.

Q. How are they compensated? Salary or commission? A. Drawing account and commission.

(3326) Q. In the automotive line are you carrying the same line that you carried in 1952, in types of products? A. Are you referring to all products?

Q. No, in the automotive, and types of products? A. There have been very few changes. There have been some.

Q. Such as? A. Well, we have added quite a few lines such as glass, which we have added within the last year, power motors, which we added in about 1952 or 1953. It was approximately 1952 that we switched from Century tires to Siberling. Other than that the lines we handle remained fairly constant.

Q. Are you today selling to the same type customer? A. Yes.

Q. Do you sell to a comparable number of customers of the various classifications that you mentioned? A. Yes.

Q. Can you give us a breakdown on that type of customer that you say you sell to, garages, service stations, industrial, I believe? A. Yes.

Q. Can you give us some idea of your volume of business with service stations? A. No, I am sorry I can't. We don't break it down in our auditing in that manner.

(3327) Q. Do your records show a decline in business to any type of station, or type of customer? A. Yes.

Q. Specific customers? A. There are many service station outlets to which our volume has declined since 1952, substantially.

Q. Can you cite some specific instances? A. Do you want these in detail?

Q. If you have them, yes. A. I might cite Frank Johnson Conoco Service at Columbus.

• • •

A. In 1952 we did a total business with that account of $1,620 for the year. It declined in 1953 to $414; in 1954 to $349; in 1955 to $397; and to $243 in 1956. When we attempted to ascertain why that loss occurred we found that in 1952 he had purchased $374 worth of anti-freeze; and in 1956 only $39.

In 1952 he had purchased $294 worth of filters; in 1956 none.

In 1952 he purchased $271 in batteries; in 1956, none.

(3328) The TBA item type product he was no longer purchasing.

• • •

(3329) Q. Do you have further instances? A. Yes. We sold an account at Beatrice, Nebraska, Edeals Conoco Service.

• • •

(3331) The last four months' purchases during the time he operated the station were $1,407.

By Mr. Dias:

Q. What year is that? A. That was 1955, I believe. It was later taken over and the name changed to Schultz Conoco, and the next full year of purchases was $429. There again characteristically the oil filters, anti-freeze and Gates products is where the loss occurred.

Q. Who was the salesman in that instance? A. At the time—most of the time when it was Edeals' I believe it was handled by—we have changed salesmen down there a couple of times—I couldn't nail that down exactly as to names.

Q. And the next instance? A. Spark's Conoco, at Council Bluffs. The last full year of purchases for Spark's, when Sparks operated the station, was $3,267. That lease was terminated and it is now known as Gibson Conoco. The total purchases for the first year of that operation under the name of Gibson was $328.88.

Q. And the year on that? A. I am referring to the last year of operation under Gibson, which would be 1956. The tires and tubes to Sparks was $1,164. None after the lease was terminated.

Oil filters, $442 under Sparks, none after the (3332) lease was terminated and taken over by someone else.

Anti-freeze, $371.70; none after it was taken over by Gibson.

Batteries, $240.62; none after it was taken over by Gibson.

Rubber products, $82; none after it was taken over by Gibson.

Q. Again, will you tell me what the last full year of operation was of Sparks? A. $3,267.

Q. What year was it? 1955 or 1954? A. I am not sure because I had these figures prepared by the bookkeeping department. They just took the last year.

Q. Do your records show who the salesman was in that instance, the company salesman? A. O'Neill. Of those $326 in the year 1956, $319.50 of that was an air-conditioning unit. So the balance of all the other items would be $9.38.

Fay's Conoco, at Lincoln, in 1953 we did $608 worth of business with him. In 1954 we did $1,058. For the first eight months of 1955, $876.82. That lease was terminated and it is now known as Millards Conoco.

Q. Have you done any business with Millards? A. $227.91—let me put it this way: The last four months of 1955 it was $208.68. The full year of 1956 it was $372. (3333) Again the volume that is missing is oil filters, anti-freeze and those allied products.

Q. Do you know who the salesman was in that instance? A. That I believe was Cramer. The stations on which I have been giving you these figures are all leased stations. I have an example here of an independent type of operation.

Mr. Barton: Object.

By Mr. Dias:

Q. What do you mean by independent, Mr. Toft? A. A man who owns his own station and purchases Conoco products.

Q. Very well. Will you cite that instance? A. It is the Fleetwing Service at 5745 "O" Street, Lincoln, Nebraska. In 1952, $2,501; in 1953, $3,288; in 1954, $3,456; in 1955, $3,075; in 1956, $3,368.

Q. What type products does he purchase? A. He purchases all types of products.

• • •

Q. Your records show the same situation in regard to all (3334) leased and independently-owned stations?

• • •

A. It is not a uniform pattern. We find that geographically as we get further out in the state, we don't have the same difficulty in selling TBA items to Conoco stations that we do near Lincoln and Omaha, Grand Island, and some of the bigger cities.

Q. Do your records show, however, that the pattern does follow into the larger cities?

Mr. Barton: Object.

Hearing Examiner Kolb: Objection overruled.

(3335) *By Mr. Dias:*

Q. For example, Omaha? A. There are exceptions.

Q. Do your records show—have you finished the specific instances? A. Yes.

Q. Do your records show what type TBA products those stations buy? A. Which ones?

Q. The Johnson, Edeal, Sparks, Fay's, Millard's. A. There are some of them who don't buy any, as pointed out.

Q. I mean other than your own. Do your records show whose products other than your own they are buying? A. Our records wouldn't show that.

Q. Do you know what brand TBA they buy? A. Logically they would be buying the products handled by B. F. Goodrich and their own jobbing outlets.

• • •

Q. Do you have any instances of loss of sales to Texaco stations, Mr. Toft? A. Yes, we could recite examples of the same character as we have given here on Conoco.

(3336) Q. Are you prepared at this point to do that? A. I am not, because I didn't know until very recently that Texaco was involved in this matter.

* * *

Hearing Examiner Kolb: There is no evidence being introduced as to Texaco, as I understand it, at the present time. Is that right?

Are you through with the witness?

Mr. Dias: Yes, sir.

Hearing Examiner Kolb: Then there is no evidence.

* * *

(3337) *Cross-examination by Mr. Barton:*

* * *

Q. In the Omaha area you have a sizable number of competitors, do you not? A. That is correct.

Q. For example, Adolph's Auto Supply is a competitor of yours in the automotive field in this vicinity, isn't it? A. Yes, although I know very little about that account.

Q. And Al's Auto Supply sells to service stations in this area? A. That is correct.

Q. And Automotive Rubber Products Company sells to service stations in this area? A. I assume they do.

(3338) Q. You know they do? A. Not in every case.

Q. They don't sell to every service station as you do? A. That is right.

Q. And Bauer Supply is a competitor of yours? A. That is correct.

Q. And P. A. Clark Supply Company is a competitor of yours here? A. Right.

Q. And Jones Automotiye, Inc., is a competitor here? A. Right.

Q. In Omaha. And Color Supply Company is a competitor here? A. Yes.

Q. And Keuhn-Baymiller is a large competitor of yours here? A. Correct.

Q. And Midwest Distributing Company is a competitor of yours here? A. Yes.

Q. Morgan Wheel and Equipment Company is a competitor, and Nelson Auto Company is a competitor here? A. Yes.

Q. And the Omaha Rim and Wheel Company is a competitor? A. Yes.

(3339) Q. And Opie Brothers Auto Supply is a competitor? A. Right.

Q. And Paxton-Gallagher is a competitor selling to service stations here? A. Yes.

Q. And Storz Supply Company is a substantial competitor selling to service stations in competition to you? A. Right.

Q. And Carl A. Anderson is competitor of yours in this area as well as in Lincoln? A. Correct.

Q. And Thompson Distributing Company is a competitor of yours? A. Yes.

Q. And Automotive Supplies, Inc., is a competitor of yours? A. Correct.

Q. Much smaller than you are but a competitor? A. That is right.

Q. And the Milder Company is a competitor? A. To a degree.

* * *

(3340) Q. It is a fact that you have many more competitors in the automotive supply field in Omaha than you have in Grand Island, Nebraska? A. Yes, or anywhere else in the state.

Q. Hasn't there been a decrease in gasoline consumption (3341) in Nebraska in 1956 over 1955? A. That I wouldn't be aware of.

Mr. Dias: I object.

By Mr. Barton:

Q. You don't know about that? A. No.

* * *

(3342) Q. How about these accounts that you have been testifying about today? Are you familiar with each one of those? A. Not in every case personally, no.

Q. You told your bookkeeper to pick some figures off the ledger and you brought them in here, didn't you? A. That is correct.

Q. And with respect to Sparks' Conoco, at Council Bluffs, how much did you sell them in 1952? A. $3,267.21.

* * *

(3344) Q. In order for a service station to be a customer of yours for those products it has to be engaged in the general field of repair work, doesn't it? A. That is correct.

Q. It is much more likely that a service station owner is going to be engaged in the business of repairs if he has a station which is equipped for that purpose, isn't it? A. That is correct.

* * *

Edward G. Seidenglanz, for Commission—Direct

(3347) EDWARD G. SEIDENGLANZ was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name for the record? A. Edward G. Seidenglanz.

Q. And your business address? A. 7302 Pacific.

Q. By whom are you employed? A. Sidles Company.

Q. And in what capacity? A. Territory salesman.

Q. How long have you been so employed? A. Nine years.

Q. What is your sales territory? A. It starts at 31st and Farnum and goes west to 90th, and then goes south to Grover Street.

Q. Do you sell or attempt to sell the full Sidles line? A. Yes, sir.

Q. Are there any Texaco and Conoco stations in your territory? A. Yes.

Q. Can you give us some idea of the number of Texaco? A. I have six Texaco and three Conoco.

(3348) Q. How many of the Texaco stations do you solicit regularly? A. I would say four of them.

Q. How often do you call on them? A. Once a week.

Q. Have you ever called on the remaining two? A. Yes.

Q. How recently? A. About a month ago.

Q. And prior to that can you give us some idea when you called on them? A. I try to make those about once a month.

Q. Do you sell any products to those two? A. No. They have picked up some merchandise, however.

Q. Do you know why they do not buy from you?

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. No.

By Mr. Dias:

Q. You do not? A. No, I do not.

Q. Of the four that you call on regularly, do you sell to those four? A. Yes.

Q. What do you sell to those stations? A. They buy some cartridges and some chemicals.

(3349) Q. Do they buy your tires? A. No.

Q. Batteries? A. No.

Q. Is that true of all four? A. Pretty much. The only way they will buy is if they have a quick sale for it and they pick it up.

Q. Can you name those four stations? A. One of them is R and H Texaco.

Q. Do you know the location? A. 75th and Pacific.

One of them is Carrel—C-a-r-r-e-l. He has gone out of business.

Q. And their location? A. 60th and Center.

Q. Can you recall another? A. Acamo—A-c-a-m-o.

Q. And their location? A. 13th and Deer Park Boulevard.

Another one is Stans Texaco. That is at 13th and Williams.

Q. Referring now to R and H Texaco, what do you sell to those people? A. He is one of those that comes down and picks up most of his merchandise because he is less than a block away from the store.

(3350) Q. Do you know what type products he picks up? A. Oh, he has picked up batteries, he has picked up some cartridges.

Q. Anything else? A. Shock absorbers and stuff like that.

Q. How about Carrel? A. Carrel is out of business. There is a new man in there now.

Q. When did Carrel go out of business? A. Carrel went out, I believe in December.

Q. 1956? A. Yes.

Q. Who is the new man? A. A fellow by the name of Ed Goldap—G-o-l-d-a-p.

Q. Do you sell to Goldap? A. I have been there, but he has picked up some merchandise. I never sold him as yet.

Q. Do you know what type merchandise he picks up? A. He has picked up some shock absorbers and some cartridges, too.

Q. What is a cartridge? A. That is an oil filter cartridge.

Q. Anything else that you can think of? A. No.

Q. How about Acamo? (3351) A. Mr. Acamo has ordered oil filter cartridges, shock absorbers, and some chemicals.

Q. And Stans? A. Oil filter cartridges, shock absorbers, chemicals, some equipment I have sold him.

Q. Some what? A. Equipment.

Q. What would that be? A. Tire tools and greasing equipment.

Q. Do you know what type tires and batteries these stations handle? A. Firestone.

Q. All of them? A. Acamo is Firestone, Stan was Firestone, Carrel was Firestone.

Q. How about Godlap, who took over? A. He was Firestone. And I believe R and H is Goodrich.

Q. Check me on this: R and H, Goodrich; Carrel, Acamo and Stans, Firestone? A. Right.

Q. And Goldap replaced Carrel.

Do these also handle the accessories or any of the accessories of Goodrich or Firestone? Do you know? A. As far as I know they carry the Firestone line.

Q. These stations that purchased your shocks, filters, (3352) batteries, did they stock them openly? A. All except Acamo. He had his cartridges in the back room.

Q. What about anti-freeze? Did you sell anti-freeze to any of those? A. I sold some anti-freeze to Stans.

Q. Can you tell us when? A. In November.

Q. 1956? A. 1956.

Q. Did he stock it openly? A. Yes, he did.

Q. Was it delivered on time? A. At the time he ordered it it was on a Tuesday. He told me to hold up delivery until Thursday because someone from the Texas Company was coming down.

Mr. Royall: Motion to strike, your Honor. What was the question?

(Question read.)

Mr. Royall: Motion to strike. It is not responsive. Also, it is double hearsay.

Hearing Examiner Kolb: The motion will be denied.

By Mr. Dias:

Q. Does that operator purchase filters and chemicals from you? (3353) A. Yes, he does.

Q. Does he stock them openly? A. Yes.

Q. On the filter sales to those stations, Mr. Seidenglanz, what brand filter did they purchase? A. Fram and AC both.

Q. Fram and AC? A. Yes.

Q. Is that true in each, as to R and H Texaco? A. Yes. He would buy Fram and he would buy some AC also.

Q. And Carrel? A. Carrel would buy AC.

Q. And Acamo? A. He would buy Fram.

Q. Stans? A. Stans would buy Fram.

Q. On these Conoco stations that you call on regularly, can you give us the addresses of those? A. Quinn Conoco—Q-u-i-n-n.

Q. Address? A. 75th and Pacific.

(3354) Q. Next? A. Bukachek—48th and 11th and Saddle Creek.

Mr. Barton: Three corners?

The Witness: Yes.

By Mr. Dias:

Q. And your third one? A. There is a new man who just went into the third one.

Q. How recently? A. Just this last part of December. Before that it was the Edwards Conoco.

Q. How long had you been calling on Edwards?

Mr. Barton: Where is it?

The Witness: He is on about—it would be about 38th and Center.

By Mr. Dias:

Q. And that changed hands in December 1956? A. Yes.

Q. How long had Edwards been there? A. Edwards had been there about a year and a half or so; since I have been on the territory.

Q. Are you in a different territory now? A. No. I was on the counter before I went out.

Q. I thought I understood you to say that you had been a salesman for nine years? A. No. I had been employed by Sidles nine years.

(3355) Q. And selling for how long? A. About a year.

Q. One year? A. A little over a year.

Q. Have you sold to Quinn Conoco? A. Yes, sir.

Q. Tell us what you sold him? A. Ignition parts, oil filter cartridges, shock absorbers, chemicals.

Mr. Barton: Do you mean radiator chemicals?

The Witness: Yes. And equipment, of course.

By Mr. Dias:

Q. Do you mean station tolls, et cetera? A. Yes.

Q. What brand filters do you sell him? A. Fram.

Q. Any AC? A. He has bought some AC.

Q. Can you give me any idea of the quantity of filter sales to Quinn? A. He picks up a lot of it so it is hard for me to say offhand.

Q. How about Bukachek? A. Bukacheck picks up most of his. I have sold him some equipment.

(3356) Q. Is that all you have sold him? A. Yes. He picks up most of his merchandise from the store.

Q. And Edwards? A. In the last four or five months of 1956 I didn't sell Edwards anything.

Q. Had you sold him previously? A. He had picked up, too, at the store.

Q. Do any of those three buy your tires or batteries on a pickup basis or otherwise? A. Yes.

Q. Which ones? A. I believe Quinn has picked up some, where he had customers who specified our tires.

Q. Any others? A. Not that I know of.

Q. Do you know what brand TBA those three stations carried? A. Quinn has Firestone.

Q. How about Bukachek? A. Bukachek, I believe, is Goodrich.

Q. Edwards? A. I don't know what Edwards has.

Q. How long have you been calling on Quinn? A. Seven months; since he opened.

Q. He opened seven months ago? (3357) A. I think it was around seven months ago.

Q. Did he openly start carrying Firestone when he opened? A. I believe he was Goodrich before that.

* * *

(3358) *Cross-examination by Mr. Barton:*

Q. Mr. Seidenglanz, you sold to Quinn the entire year 1956, is that correct? A. Yes, sir.

Q. And your volume with him was about $5,000, wasn't it? That is including the pickups and sales? A. Yes.

Q. And besides your selling to Quinn, Frost Industries, now Automotive Supplies, sold to Quinn? A. That is right.

Q. And Paul Davie and Sons sold to Quinn? A. Yes.

Q. And Auto Electric sold to Quinn? A. Yes.

Q. And Sample-Hart sold to Quinn? A. Yes.

Q. And Adolph's Auto Supply sold to Quinn? A. Yes.

(3359) Q. And Quinn's is a Conoco-leased station? A. Yes.

Q. So when you answered Mr. Dias' question about whose TBA was in Quinn's, you meant besides yours there was some Goodrich and some Firestone and some of these various other suppliers? A. Yes.

Q. In connection with Bukachek, you are aware of course that Adolph's Auto Supply is a very substantial supplier of that service station? A. Yes.

Q. And that Storz' Supply is also a substantial supplier? A. That is right.

Q. And of course Genuine Parts and Al's Auto Supplies sell there? A. Yes.

Q. And Frost Industries gets some of the business there, doesn't it? A. Yes.

* * *

Cross-examination by Mr. Lorenzen:

Q. Mr. Seidenglanz, Stan Coppock, that is Stan's Station? A. Yes.

Q. At 13th and Williams? A. Yes.

(3360) Q. And you sell, Sidles Company sells him about $1500 worth of merchandise in the course of a year? That is about right, isn't it? Somewhere in that neighborhood? A. Yes.

Q. I am not holding you to accurate figures but that is about it? A. Yes.

Q. And he also buys a little from the Anderson Company, one of your competitors? A. Yes.

Q. And do you have in mind any other than the Anderson Company from whom he also buys? A. I don't believe Stan bought too much.

Q. He is a kind of a small— A. He is not a big operator.

Q. Do you know the amount of Firestone he has is quite limited? Isn't it? A. He has Firestone belts and Firestone cartridges, in there and he has some of their chemicals.

Q. Belts, cartridges and chemicals? A. Yes.

Q. That is what he has from Firestone? A. Yes.

Q. And Peter Dall, 7502 Pacific, is he one of the others? A. That is one of the others.

(3361) Q. What name did you give him? You called him something else? A. That is under R and H.

Q. What would you say you sold to him? A little under $1500? A. He hasn't been in there too long. Previous to that that was Jack Kelly who was in that station.

Q. That station you sold about $1200? A. At the time Kelly was in there, yes.

* * *

Redirect examination by Mr. Dias:

Q. You stated that on sales to Quinn, that Frost also sells to them, Paul Davie, Sample, and several others. How do you know that is so? A. I have seen the Frost man in there.

Q. Have you seen the others in there? A. Paul Davie, no. I haven't seen Paul Davie in there.

Q. How about Samples? A. I have seen where he has picked up from Samples.

Q. Adolph's? A. The same way. I have seen him.

Q. Do you know what Quinn purchases from those companies? A. No, sir, I don't.

Q. Do they buy any tires or batteries from those companies, (3362) any of those companies?

* * *

The Witness: He has nothing but Firestone batteries in there now.

By Mr. Dias:

Q. How about tires? A. Firestone tires.

Q. And Bukacheck, have you seen those other distributors in there—Adolph's, Genuine Parts, Storz, Al's, Frost? A. No, but I have seen where they have picked up from him.

Q. Does Bukachek buy tires and batteries from those people? A. That I do not know.

Q. Do you know what Bukacheck does buy from those other suppliers? A. He picks up quite a few small items from Adolph's, such as emergency car parts.

Q. And Storz, do you know what he buys from Storz? A. He buys mufflers. I do know he buys mufflers from Storz.

Q. Storz sells tires? A. That is right.

(3363) Q. Do you know what brand? A. No, I don't.

Q. If I suggested that Storz sold Century, would that refresh your recollection? A. Yes, I believe they do.

Q. Have you ever seen any Century tires in Bukachek's? A. No, sir.

Q. You have not? A. I have not.

Q. Stan's purchase from Anderson. Do you know what they purchase from Anderson? A. No. He has run down to Anderson and picked up some carburetor parts.

Q. Does he buy any batteries from Anderson? A. Not that I know of.

Q. What brand tires—does Stan carry tires? A. He had some Firestones in there.

Q. How about batteries? Does he stock batteries? A. I think he had some Firestone batteries.

Q. When did R&H change hands? A. It was in November, I believe, 1956.

Q. Do you know who has taken over that station? A. Peter Dall, I believe is his name.

Q. Have you sold anything to him? A. He picks up from the store.

(3364) Q. Does he pick up any tires or batteries? A. No. He picked up I believe a battery on a rush deal that he had sold.

Q. You have been in the station, have you? A. Yes.

Q. What kind of tires does he carry? Does he carry any tires? A. I believe it is Firestone. I have never noticed. I believe it is Firestone.

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Recross examination by Mr. Barton:

Q. How many customers do you call on? A. All together?

Q. Yes. A. I would say 60.

Q. How many has Century tires? A. I don't know.

Q. You didn't see them in any of them? A. No.

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(3366) CARL A. NELSON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address? A. Carl A. Nelson, 623 South 16th Street, Omaha, Nebraska.

Q. Where are you employed? What is your company? A. Carl A. Anderson, Incorporated.

Q. State your position, please? A. President. President and General Manager.

Q. President and General Manager? A. Yes.

Q. How long have you been President and General Manager? A. Two and a half years.

Q. Were you with Anderson prior to that time? A. Yes, sir.

Q. How long? A. I have been with them 30 years.

Q. What other offices have you held in that company? A. Every job in the company, including janitor.

Q. What is the trading area of your company, Mr. Nelson? (3367) A. The State of Nebraska and western Iowa.

Q. Do you have any branch offices? A. I would give a qualified yes. We don't believe them branches. We operate each company as an independent unit.

Q. How many of those do you have? A. Is the question outright ownership? Wholly owned subsidiaries? Or is it companies that we may have invested capital in?

Q. Do they all operate under the name of Carl A. Anderson, Inc.? A. Only Omaha and Lincoln. And those are separate corporations.

Q. How many salesmen do you employ here in the local office? A. Localized—the question is the amount of salesmen we work in the local area?

Q. Yes. A. Or those who headquarter in Omaha?

Q. If there is a difference, what is the difference? A. We have five men that work the localized area, and we have four additional that headquarter in Omaha but don't work this vicinity.

Q. Where do they work? A. Up toward the Sioux City area, western Iowa. They work in the redistribution department.

Q. How are these five compensated, the five local? (3368) A. Drawing account with commission.

Q. What type customers do you sell to? A. Industrial, independent garages, car dealers, and service stations. And under industrial I would like to qualify that. Also fleet accounts.

Q. Do you have any idea of the volume of sales to each of those categories? A. A guess.

Q. Percentage-wise. A. I would say our fleet business is most likely in this localized area approximately 30 percent.

Q. And car dealers? A. Car dealers and independent garages would be somewhat around that same figure. Industrial business would be somewhat around 25 percent. And whatever is left over, I believe about 15 percent, would be service stations.

Q. Do you sell to all type service stations? A. We try to sell to all type service stations.

Q. Are there any that you are unsuccessful with?

* * *

(3369) A. We are successful in selling all types of accounts, specialized carburetion and electrical equipment. Does that answer the question?

By Mr. Dias:

Q. Not quite. What type products are you unsuccessful with? A. Well, we are not—

Mr. Royall: What is the question?

(Question read.)

Mr. Barton: Object to the form of the question.

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. We are not too successful in selling batteries, anti-freeze, fan belts, spark plugs, radiator hose, to any company-controlled service station.

Mr. Royall: Motion to strike the answer, your Honor.

Hearing Examiner Kolb: Motion denied.

By Mr. Dias:

Q. What do you consider a company-controlled station?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. Such as Texaco, Conoco, Phillips, Standard Oil, Mobil.

Q. All stations—

Mr. Royall: Motion to strike the answer.

Hearing Examiner Kolb: Denied.

(3370) *By Mr. Dias:*

Q. All type stations handling those gases? A. No.

Mr. Royall: Objection.

A. Those that are owned by the various companies.

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

By Mr. Dias:

Q. Can you give us your annual volume of sales, 1952 through 1956? A. May I give a qualified answer on that,

in that our overall volume of the corporation is somewhat—in the Omaha operation is right around $2,200,000. But our localized business is somewhat around $580,000.

Q. Is that an average figure or for one specific year? A. It would vary maybe. In the last few years it has gone up approximately 15 percent, on the overall basis.

Q. What brand batteries do you carry, Mr. Nelson? A. Auto-Lite.

Q. Anti-freeze? A. Zerone and Zerex—or Dupont, I guess is the company.

Q. Fan belts and radiator hose? A. Dayton.

Q. Chemicals? A. Currently I don't believe we handle chemicals.

(3371) Mr. Barton: Are you talking about radiator chemicals?

Mr. Dias: What is the difference?

Mr. Barton: Waxes.

By Mr. Dias:

Q. Do you handle any waxes and polishes? A. I am not positive, but I don't believe we do.

Q. How about radiator chemicals? A. I don't believe we handle any of those. We may, but I can't answer for sure.

Q. Do you also handle station equipment? A. Battery chargers only.

Q. How about spark plugs? A. Auto-Lite.

Q. Have your sales of Auto-Lite, DuPont, Dayton, and Auto-Lite plugs and batteries gone up 15 percent in the last several years? A. No.

Q. What has happened with those? A. Our volume is approximately the same. But the volume is in a different category. We sell more to fleets today than we sell to service stations by far.

Q. Why?

Mr. Barton: Object.
Mr. Royall: Object.
(3372) Hearing Examiner Kolb: Overruled.

By Mr. Dias:

Q. You may answer? A. Well, we can't sell them.

Mr. Royall: Motion to strike, your Honor.
Hearing Examiner Kolb: Denied.

By Mr. Dias:

Q. Do you know how many Texaco stations there are in your sales area, your local sales area? A. I do not.

Q. Do you know how many Conoco stations there are in your local sales area? A. I do not.

Q. Do you sell or attempt to sell to Texaco or Conoco stations? A. Yes. We attempt to sell every account possible.

Q. Will you cite some instances of your sales to Texaco stations? A. We have a few records—we have taken a few specific accounts. For instance, Dingers Service Station, 42nd and Center Streets. From 1952 to '56—in 1952 we sold them $295.14. Then it has gone down constantly to 1956, $8.09.

Q. The next one? A. Fontenelle Park Texaco. In 1949, $889.67. It has gone down in 1954 to $9.92.

(3373) Q. Can you give us the address of that? Fontenelle? A. 42nd and Ames Avenue. No sales beyond 1954.

13th and Deer Park Texaco, high in 1951 was $2,826.42. Low, 1954, $92.49.

Bill Brooks Texaco station; apparently we quit selling them in 1952. $156.26. In 1951 it was $555.60.

Mr. Lorenzen: Where is that located?
The Witness: 13th and Harrison.
Ernies Texaco, 45th and Lake.

By Mr. Dias:

Q. And the address? A. 45th and Lake. We started to sell them in 1951, $9.00 that year. It went up to, in 1954, $1,207. Then it started going back down. 1956, $117.92.

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Cross examination by Mr. Barton:

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(3374) Q. Your volume in Lincoln is around $450,000, isn't it? A. Yes.

Q. That is added of course to the volume of what you call the local area here in Omaha? A. No. Our total Omaha volume is about $2,200,000, something like that.

Q. What is included in that? A. Nothing but Omaha volume.

Q. Nothing but Omaha? A. That is right.

Q. And Lincoln is in addition to that? A. That is right.

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(3376) Q. Carl A. Anderson has a school for teaching service station operators and garage owners carburetion and electrical work, doesn't it? A. We have continuous schools, yes.

Q. Do you have a school operating all the time? A. Yes, sir.

Q. How does that work? I mean as a practical matter. Is it in a building in your main headquarters? A. It is in a separate building, across the street from our main headquarters.

Q. How many instructors are there? A. Qualified instructors, I believe we have five on the Omaha payroll.

Q. And how many students do you have in that school as a general rule? A. We graduated I think 20 of them—18 of them last night.

Q. How many do you—there are 18 usually in attendance? A. We try to maintain a class of approximately—I am not sure—of around 14 or 15 maximum class.

(3377) Q. Who are these students? A. Anyone interested in servicing automotive electrical equipment or carburetion equipment.

Q. And by and large they are either your customers or employees of your customers around the general area in which you operate? A. Yes, sir.

Q. I take it that that has been a very successful sales and promotional adjunct to your business, hasn't it? A. It was never started for that purpose.

Q. But it has been? A. We presume it helps.

Q. And the purpose for which it was started was to enable the people who didn't know how to do this work to learn to do it, wasn't it? A. The basic purpose of it was that the manufacturer that we represent in carburetion and electrical, if their equipment were to be accepted by the ultimate consumer we had to teach people how to properly care for it. And each year, with the modern advancement in automobiles, such as four barrel carburetors and other new gadgets, service personnel had to be trained.

* * *

(3378) Q. In connection with the carburetor and electrical items I take it that you call on all outlets that have a repair shop, or some kind of a use for that equipment, don't you? A. Yes.

* * *

(3379) *Cross-examination by Mr. Lorenzen:*

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Q. And in connection with your testimony you don't have any knowledge with respect to these specific stations such as whether in the case of Dinger, for example, the station was torn up for a part of the year while a new station was being built so that the chap couldn't sell any TBA, and you don't have any knowledge like that or any information like that in these records, do you? A. No, we do not.

Q. So that might be as far as you are concerned a reason for decrease and it might not? You don't know? A. We assume if a station were rebuilt within one or two or three years, I think the records indicate that it is a (3380) continued downward trend as far as business is concerned.

Q. You don't know whether the Dinger station low figure in 1956 was due to the fact that the station was only open a small part of the time? A. I could not say.

Q. You don't know that. And there is nothing on these records from which you are testifying which would indicate in any way why these stations or these particular people bought any more or less in any one year? Nothing in these records indicates that? A. No, sir.

Q. You yourself don't have any personal knowledge of the specific facts involved in connection with each one of these cases, do you? A. I do not have specific knowledge.

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(3382) Q. Let's go to Omaha, then. I want to call your attention to the station of Mr. C. R. Anderson, at 501 East Broadway. That would be in Council Bluffs, I guess. A. East Broadway, I assume it would be.

Q. That is Council Bluffs. Do you know anything about how much that station bought from you or the Sidles Company or other competitors who are not Firestone or Goodrich? A. I did not bring the records on that.

Q. And that would go for all of the stations in Omaha, that you didn't bring the records and you don't know about them with the exception of these four which you have here today? A. Yes, sir.

Q. And you don't have any separate recollection, if I should call your attention to one specific station, perhaps, of Bob Pitta—13th and Jackson. Do you know anything about how much he buys? A. No, but we give him an awful lot of business.

(3383) Q. So you think it would be natural that he gave you quite a little, too? A. I would assume so.

Q. And he is one of these company-owned and leased stations of the Texas Company, isn't he? A. Well, I am sure he services all of our automobiles, in Omaha.

Q. He services all? A. Yes, sir.

Q. And he is one of the company-owned and leased station operators for the Texas Company, isn't he? A. I didn't know that. I don't know.

Q. You didn't know that? A. No, sir.

Q. Then when you gave your answer to Mr. Dias about this company-owned leased station you didn't have this particular one in mind? A. I know him as an individual only.

Q. But you don't know the type of his station? A. Whether his station, or whether he owned the station, I did not know.

Q. And you wouldn't have that knowledge with respect to any one of these Texas stations to whom you sell that I asked you about? A. Those that I brought figures on I took the trouble to (3384) check.

Q. Only those four? A. That is the only thing that I checked personally.

Q. That is the extent of your personal knowledge about these Texaco stations? A. That is the extent of my factual knowledge.

Q. I assume that you didn't just go in your bookkeeping file and happen to come up with these four, did you? A. No, sir.

Q. You wanted to prove something and you asked your bookkeeper to come up with four Texaco stations where your sales had shown a decrease in the period covered by these years, is that right? A. I did not.

Q. You didn't ask her to do that? A. I didn't ask any specific. I was handed those yesterday morning.

Q. You don't know how it happens that these happen to show declining—I will withdraw that question. A. I think you had better.

Q. You were handed these by your bookkeeper yesterday morning? A. Yes, sir.

* * *

(3386) Q. Do you know whether last year your company sold its merchandise to approximately 20 or 25 Texaco stations in Omaha? A. I would not know, sir.

Q. You wouldn't know one way or another? A. No, sir.

Q. Your company records would show that? A. Yes, sir.

Q. You didn't check on that number before you came here to testify? A. I did not.

Q. Do you know to how many Phillips stations you sold in 1956? A. No, I do not.

Q. Or how many Mobil? A. No, I do not.

Q. How about the Standard Oil Company of Indiana? (3387) You didn't count how many you sold? A. No, sir.

Q. You didn't make that study in any case before you came here to testify? A. No, sir.

Q. And you don't have here with you the figures of the total amount of sales to the Texaco or Phillips or Conoco or Mobil gas or Standard stations? A. I don't believe we have ever broken it down. I don't think we would be in a position to furnish that information unless we had a re-audit of the business, and then we could tell you.

Q. Anyway, you don't have it and you didn't have it before you testified here? A. No, sir.

Q. You don't sell what is known as a complete line of TBA? A. Are tires included in TBA? Isn't tires part of TBA?

Q. Tires is the "T" of "TBA." You don't handle that? A. No, sir.

Q. And you handle that limited line of accessories that you testified about? A. I believe I admitted oil filter cartridges on my previous testimony.

Q. I believe you have those in fan belts and oil filter cartridges. You don't handle any line of waxes or polishes? (3388) A. To my knowledge, no.

Q. And you know enough from your general observation about these service stations that you are testifying about that they do include in their line in addition to what you sell, other types of accessories and tires? A. Yes, sir.

Q. Do you have any idea of the total number of service stations that you sell in Omaha? A. No, I do not.

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(3389) *Redirect examination by Mr. Dias:*

Q. Do you also have competitors from the Goodrich Company? A. We do not quite consider it competition.

Q. Is there a Goodrich distributor in town? A. Yes.

Q. Is he a competitor of yours? A. In a limited way.

Q. As to those items that you sell? A. That is right.

Q. In the TBA line. What about the school of teaching carburetion? When did you start that? A. 1931.

Q. You stated on cross-examination that you don't know that the company sells to 25 Texaco stations. Do you know whether or not those 25 stations buy anything from you?

Mr. Royall: Object. He said he didn't know anything about it.

A. There is only one thing I am sure of. We try to sell (3390) them. Whether we are successful or not I can't answer. In qualifying whether Goodrich is competition or not to us, we are not in the tire business and that is the major business, as we see it, of Goodrich.

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(3391) PAUL L. RENKEN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Dias:

Q. Will you state your full name and business address? A. Paul L. Renken, 623 South 16th; Carl Anderson Company is the employer.

Q. How long have you been employed by Carl Anderson? A. Approximately 11 years.

Q. In what capacity? A. For the past five years as salesman. Prior to that receiving, shipping, parts managing, service parts managing, rather.

Q. As a salesman what is your sales territory? A. In Omaha proper everything south of Center Street, east and west to the river, and in outlying territory I go to Plattsmouth, Bellevue, Papillion, Ralston, Nebraska City, Murray, Union, Nehawka.

Q. What type customers do you sell to? A. Car dealers, independent garages, and service stations—filling stations.

Q. Can you tell us how many service stations you solicit? A. Over the whole picture you mean? All of them?

Q. Yes (3392) A. I don't have the figures exactly on that.

Q. Do you call on any Texaco or Conoco stations? A. Yes, sir.

Q. How many Texaco stations are in your sales area? Do you know that? A. Do you want it over just the City or over the rural?

Q. Wherever you sell. A. Included?

Q. Yes. A. It will run between 10 and 15 I would say.

Q. Do you know how many Conoco stations are in that territory? A. I don't have the figures available. I would say approximately ten.

Q. How many of the Texaco stations do you regularly call upon? A. Eight. Excuse me. In regularity, it depends. Some of them every week. I would say approximately five to six every week, and otherwise every two weeks.

Q. Have you called on all the Texaco stations in your area at any time? A. Yes. At one time or other I have.

Q. How long ago was that? A. Do you mean—

Q. Those that you are not calling on regularly now. (3393) A. I could give you the exact figure. About five or six probably that I am not calling on now.

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Q. Why not?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. Where there was no—seemed to be no possibility of selling them enough to pay to stop, we stopped calling on them and concentrated our efforts otherwise.

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Q. Will you name these five or six that you call on every week? A. Acamo Texaco, 13th and Deer Park; R and R Texaco Service, at 3222 "Q" Street; Dingers Texaco Service, 42nd and Center; and Peer's Texaco Service, 42nd and Center; and then there is—

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(3394) Q. That is on Peers? A. Yes. That is Peers, 42nd and "L". And then there is Tex Service Station, at 4624 South 60th Street.

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Q. Referring to Acamo, what do you sell to that station? A. At present, or of late. I sell flashlight batteries, Harrison thermostats. That is to the best of my knowledge about it.

Q. How about R and R? A. R and R, I sell them ignition and carburetion parts, and I guess I have sold them some Shaler Rislone. That is all I can recall right now.

Q. What about Dingers? A. Dingers was out of business at 42nd and Center, of course, for awhile, but was down at 42nd and North Grover, a block north of Grover. 42nd and Valley.

(3395) Q. He changed locations? A. Yes. He was at 42nd and Valley while they were rebuilding the station at 42nd and Center.

I haven't sold him much of anything except, since he has been back at the station, thermostats, some small amount, and brake fluid. I think that is it.

Q. You say you have sold him those items since he has been at 42nd and Center? A. Yes.

Q. What did you sell him when he was at 42nd and Valley? A. At 42nd and Valley and at the station before the other station was torn down, I remember selling some DuPont products and some Purolators, a small number, and Harrison thermostats. That is about it.

Q. I am still not clear on Dingers. When you first started selling to him was he located at 42nd and Valley? A. And Center.

Q. 42nd and Center? A. Yes.

Q. Where did he move to then? A. 42nd and Valley while they were rebuilding the station at 42nd and Center.

Q. How long a period did that cover, that rebuilding? A. I don't remember for sure. I would say—I don't know exactly how long he was in business there.

(3396) Q. What about Peers? Did you sell to Peers? A. Yes, I sell to Peers?

Q. What type products? A. I sold some Zerone and Zerex. Not as much as formerly, I sold brake fluid and some Pennzoil.

Q. And to Tex, at 4624 South 60th? A. What I have sold him?

Q. Yes. A. I have sold him Weatherhead fittings and brake fluid. That is about it.

Q. Have you tried to sell him any batteries—at any of those stations? A. He was a battery customer of mine at one time. He bought quite a few Auto-Lite batteries. I would say about, it must have been about four years back. But none recently. None since then.

Q. Since when? About four years ago? A. About four years I would say.

Q. What type of batteries does he carry now? A. To be honest, I don't know what he does have. It is a smaller station. I don't know what he does have, to be honest with you.

Q. What battery does Peers carry? A. At one time he handled Grant batteries. I don't know what he has now. I have never sold him Auto-Lite batteries.

(3397) Q. How about Dingers? A. Dingers, he handles Firestone batteries.

Q. Have you ever tried to sell him your battery? A. Yes, in the past I have.

Q. Did he buy any at all? A. No, sir.

Q. How about R and R Texaco? A. They handle Firestone batteries.

Q. Have you tried to sell them batteries? A. Yes.

Q. How about Acamo? A. I think he handles Firestone batteries. I haven't sold him any Auto-Lite.

Q. Acamo, R and R, and Dingers, do they carry Firestone accessories, too? A. Yes, sir.

Q. How long has Acamo been at 13th and Deer Park? A. I don't know whether it is two or three years. He came after Zaloudek.

Q. Did you sell Zaloudek, the prior operator? A. Yes, sir.

Q. When did you first start selling Zaloudek? A. I think it was 1952.

Q. Can you tell us how much he purchased, and what items? A. He purchased batteries primarily, and Dayton hoses, and (3398) Harrison thermostats, and Auto-Lite plugs and DuPont radiator products. There are other items, too, but I can't remember right now.

Q. Do you have any record of his purchases during 1952? A. I have—maybe I should verify this. I don't remember for sure whether I started in—

Q. When did you start with him? A. In 1951 or '52, 1951 purchases were as high as, I remember Mr. Nelson gave $2,286.42, and then it dropped to $469 in 1952—$469.29.

In 1953, $795.62.

Then in 1954, $92.49.

Q. Is that his last year in business, do you know? A. Yes, I think it was there. I am not sure of it, but I think so.

Q. Do you know what he was purchasing in 1951? A. In 1951? Do you mean—

Q. What items? A. I think the items I mentioned prior, Auto-Lite batteries, Auto-Lite plugs, Harrison thermostats, DuPont products, Zerone, and Zerex.

Q. Did he buy the same products in 1952? Same type products? A. Yes, only not as much of them. Batteries, I think that is when he—I can't remember exactly when the transition was, when he changed from Auto-Lite batteries to Firestone. (3399) The figures show that it must have been about that time.

Q. Were you able to sell him any batteries in 1954?

Mr. Barton: I object to "able."

By Mr. Dias:

Q. Did you sell him any batteries in 1954? A. I don't think so. We probably took care of some by warranty. I remember something about that.

Q. When did he switch to Firestone, do you know? A. I should have those figures available but I don't. I don't know for sure, to say exactly.

Q. Do you know why he switched to Firestone?

Mr. Royall: Why what?

Mr. Dias: Why he switched to Firestone?

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. Well, he kept telling me he was going to have to switch to Firestone and display the Firestone battery because he was instructed to do so.

By Mr. Dias:

Q. By whom?

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(3400) A. By Firestone.

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

The Witness: By the Firestone representative.

Mr. Royall: Move to strike on the ground it is clearly double hearsay.

Hearing Examiner Kolb: Motion to strike denied.

With whom did you have the conversation?

The Witness: Jim Zaloudek.

Hearing Examiner Kolb: About when was that?

The Witness: I should have figures on exactly when it was. It is hard to say what year.

Hearing Examiner Kolb: When with reference to the time he started handling Firestone batteries?

The Witness: Previous to the time he started handling Firestone batteries?

Hearing Examiner Kolb: About how long before?

The Witness: It went on for about a year I would say. I know I remembered him as I called on him and mentioned Auto-Lite. And he was buying Auto-Lite. He said "I am just going to have to switch over. I am going to have to display the Firestone battery," which he did, and our batteries were put in the back room.

(3401) Mr. Royall: Your Honor, I have an objection to those questions and a motion to strike that answer.

Hearing Examiner Kolb: Let the record show counsel has objected to all the questions asked by the Hearing Examiner. The objection is denied. Motion to strike all answers by the witness, and motion to strike denied.

Is there anything else?

By Mr. Dias:

Q. Do you know the Fontenelle Park Station at 42nd and Ames? A. No, sir, I do not. It is not in my territory.

Q. How about 13th and Deer Park? Is that Zaloudek? A. That is Zaloudek.

Q. Bill Brookes, 13th and Harrison? Is that in your territory? A. That is in my territory.

Q. Do you sell him anything? A. I don't know. No. I have called a few times since, but I don't sell him anything.

Q. Since when? A. Well, he was at 13th and Deer Park and then moved to Bellevue. I don't have the figures exactly when he moved to Bellevue either.

Q. Are you sure he was at 13th and Deer Park? A. Bill Brookes?

Q. Yes. (3402) A. No. Not Deer Park. That is Zaloudek. 13th and Harrison. I stand corrected.

Q. When did you start selling him? A. When I started on the territory. I think it was the latter part of 1951 or the first part of '52.

Q. What did you sell at that time. A. Trico and DuPont products, Harrison thermostats. That is all I can recall for sure that I can actually state.

Q. How long were you selling to him? 1952 or '51 to what time? A. What was that.

Q. How long were you selling to him? 1951 or '52 to when? When did you stop selling to him? A. I said before I don't remember just exactly when he quit and went to Bellevue. After he got in the new station at Bellevue I hardly sold him anything.

Q. Was he out of your territory then? A. No, sir. It was a new station and he didn't purchase products from us.

Q. Was he handling another brand of TBA in the new station? A. Most of his purchases, I think, as near as I know, were from Firestone.

Q. Did he handle Firestone tires? A. Yes, I am sure he did.

Q. Batteries? (3403) A. Yes.

Q. Accessories? A. Yes, I would say so.

Q. Did he own his own station? A. I don't know.

Q. Have you sold any anti-freeze to any of these stations? Acamo, R and R. Dingers, Peers, Tex, Bill Brookes? A. I have to Peers. But the rest of them I don't recall if I did. I don't think so.

Q. Have you had any situation similar to that Zaloudek situation?

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By Mr. Dias:

Q. Similar to any of the others? A. Well, along general lines, yes, but I don't have specific figures or anything other than—all I have figures on is Zaloudek, Dingers, and Bill Brookes.

Q. What sort of figures do you have on Brooks? Do you have sales figures? A. Yes, total sales.

Q. Which years? Do you have anything other than 1951 and '52? A. No, sir.

Q. What do you have for Dingers? Do you have 1953, '54 and (3404) '55? A. 1955 and then '56.

Q. What were your sales to Dinger in 1955? A. $64.96.

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Cross examination by Mr. Lorenzen:

Q. This station that you call Dingers, that is H. E. Johnson, is it? A. That's right.

Q. Dingers in the name he has on the station? A. That is a nickname.

Q. I think Mr. Dias asked you if you had some sales figures for him and you said you had 1955 and '56, and then you gave him 1955 and you didn't give him 1956.

Mr. Dias: We got those through—

By Mr. Lorenzen:

Q. Will you give us the 1956 figure? A. $8.09.

Q. Didn't he buy some charging equipment and brake fluid (3405) and matters of that kind that came to about $600 in 1956? Don't you know anything about that? A. Not that I know of, sir.

Q. You don't know anything about that? A. 1956? I don't think so. Not that I know of.

Q. Could he have gone and picked those up at the store and then— A. Just a minute, sir. He could have gone and picked something up at the store, but I don't think he bought any charging equipment in 1956.

Q. If he picks it up at the store, he doesn't buy it through you in those cases, does he? A. Well, no. If they pick up at the store I have no record of that, that's right.

Q. And the store does quite a substantial over-the-counter business with all kinds of people, doesn't it? A. Well, they do over-the-counter business, yes.

Q. And all the over-the-counter business that is done with anyone, is that what you call pick-up business? A. Yes, I guess that is what you would call it.

Q. That applies not peculiarly with you. Other salesmen's customers go into the store and pick-up things? A. That's right.

Q. It is a general custom in the business? A. Yes.

(3406) Mr. Dias: The whole business? I object.

Mr. Lorenzen: Yes, the whole business.

Mr. Dias: Whose business? His or the industry's?

Mr. Lorenzen: His company's business.

By Mr. Lorenzen:

Q. That is the way you answered it? A. You meant—to clarify it—that there is a possibility of anyone picking up.

Q. That's right. A. That is the way I meant it. There is a possibility of anybody picking up for cash. However, I might say this, as to the charger. That wouldn't be picked-up.

Q. That wouldn't be? A. No, sir.

Q. Not as a general proposition anyway. A. They still don't come and buy one of those for cash.

Q. Maybe he got this from a competitor. Do you know the extent to which these stations, about which you have testified, buy from competing companies such as Sidles or that long list of competitors that we have had at these hearings? Perhaps you have heard them recited here. A. Well, I don't have any specific items. I do know that competitors sell them. That is granted, yes.

Q. And among them are Sidles Company? A. Yes, I suppose.

(3407) Q. You said something about trying to sell batteries to this chap, Tex, at 60th and "L"? A. Yes.

Q. Would it refresh your recollection if I told you that the batteries he carries now are Delco? A. I believe I have seen some Delco there.

Q. At the Tex? A. I have seen some Delco batteries there. I can't say how many, but since you mention it, I do remember seeing them. What he has now, I don't know.

Q. In connection with Acamo, 13th and Deer Park, you don't know how much equipment he bought from Sidles during the time that you testified you sold him some Anderson merchandise? A. I wouldn't know.

Q. You wouldn't know what he bought from other of these suppliers? A. I wouldn't have any record of that.

Q. Would the same thing be true about Mr. Peers? You wouldn't know how much he bought from Sidles? A. No.

Q. Or from any of the other competitors? A. No.

Q. You testified a man named Brooks took over one of these stations. A. Yes.

(3408) Q. Do you remember that? A. Took over one?

Q. Didn't you say that he came in and substituted for someone else in one of these stations? A. I don't think—He didn't substitute, no. He changed from one station to the other.

Q. He is the fellow who went to Bellevue? A. That's right.

Q. And do you happen to know whether it isn't a fact that before he went into this filling station business he was a salesman for the Firestone distributor here? A. I believe I do recall hearing that, yes.

Q. Does this R and R Company have a—is that Linton and Riggs, at 33rd and "Q"? Is that the name of the people who operate that station, Ralph Linton? A. Ralph Linton and Ron Riggs, I think it is.

Q. That is the station that you had in mind? A. R and R.

Q. We had that listed as L and R. A. It is R and R.

Q. I wanted to be sure it is the same thing.

Do you have the sales figures with you as to the amount which that station buys from the Anderson Company? A. No, I don't have it.

Q. Would you say that it was somewhere in the neighborhood (3409) between 75 and a hundred dollars a month? A. It would hit that pretty close, I think, on ignition, yes.

Q. You also— A. I wouldn't know for sure. I don't have the exact figures.

Q. You also sell them, among other things, I think you testified, Rislone. A. Yes, I have sold them some Rislone.

Q. How many accounts do you call on? A. How many accounts all together?

Q. Yes. A. It would take a week-end's tabulation.

Q. I don't want the names. Just tell me about how many you have assigned to you that you call on with some regularity. A. I don't know.

Q. You have no idea? A hundred? A. It would be a guess.

Q. About 125? A. It would be a good guess. I suppose. I would think there would be that many, yes.

Q. You would think there would be that many? A. Not that many regular every week, but there are that many different accounts.

Q. Tell us the type of accounts of which those hundred would consist? A. I would classify that as car dealers and independent (3410) garages and service stations.

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Q. By the way, is the station at 24th and "G" in your territory? A. Yes.

Q. Harley Fisher, I think it is. Is that the name of the chap who operates that station? A. That was Frank's Texaco at one time wasn't it?

Q. Maybe that is what he called it. A. As I recall it.

Q. Did you happen to notice that he carried Delco batteries in that station? A. No. To be honest with you, I haven't stopped there for sometime.

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Cross-examination by Mr. Barton:

Q. When you were calling on Peers Texaco, and he was handling Grant batteries—is that right? A. As near as I recall it.

Q. And you tried to sell him your batteries, the Auto-Lite? A. I have talked to him about Auto-Lite batteries.

Q. Since he had Grant batteries he was not interested in (3411) handling yours, is that right? A. He has been a Grant dealer for some number of years.

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Redirect examination by Mr. Dias:

Q. Mr. Renken, do you get commissions on purchases that your customers make over the counter? Cash purchases? A. Yes. That has been customary.

Q. Do they just hand you a sum of money and say, "here are commissions," or do they tell you— A. It is figured, it has been figured overall, the whole territory. That's right. And we get our figures. We don't know exactly where it has come from when we get it. Does that answer your question?

Q. Yes. A. I didn't mean to be confusing.

Q. Tex, at 60th and "L", you said you had seen Delco in there. Have you ever seen Goodrich or Firestone batteries in that station? A. I can't say. I don't know.

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